STAFF SUMMARY OF FEDERAL TRADE COMMISSION ACTIVITIES AFFECTING OLDER AMERICANS JANUARY 1999-AUGUST 2001

The Federal Trade Commission is the federal government's principal consumer protection agency, with broad jurisdiction extending over nearly the entire economy, including business and consumer transactions on the telephone, the Internet, and elsewhere.[1] Under the Federal Trade Commission Act, Congress has directed the Commission to prohibit unfair or deceptive acts or practices (its consumer protection mission) and unfair methods of competition (its competition mission).[2]

Much of the Commission's work addresses practices or industries that are of particular significance to older consumers. This Report describes those aspects of the Commission's work from January 1999 through August 2001. Section One describes recent Commission law enforcement initiatives within its consumer protection mission which are of particular importance to older consumers, including health care initiatives, financial practices initiatives, sales and promotional practices initiatives, and enforcement initiatives against fraud. Section Two highlights the Commission's consumer education program. Section Three describes Commission law enforcement initiatives within its competition mission, with a particular focus on law enforcement and other initiatives in the health care sector, the energy sector, the retail sector, and the funeral homes and cemeteries sector. Finally, Appendix I describes a comprehensive and ongoing initiative conducted by the Commission's Regional Offices during the October 2000 - August 2001 period -- in conjunction with other law enforcement agencies, AARP, Better Business Bureaus, social service agencies, media, and business and consumer groups -- to help educate and empower senior citizens to protect themselves from fraudulent operators. To provide a more general overview of Commission efforts to provide information to and secure information from both Congress and the general public, Appendix II lists Congressional testimony the Commission delivered from January 1999 to August 2001, while Appendix III lists Commission workshops and conferences conducted during the same period.

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THE CONSUMER PROTECTION MISSION

HEALTH CARE INITIATIVES

It is critical that all consumers have accurate information about the costs and benefits of health care services, devices, drugs and related products. While health care is a subject of concern for all consumers, it is of particular concern to older consumers, their families and caregivers, and the Commission devotes substantial resources to preventing the dissemination of unsubstantiated or otherwise deceptive claims about the health benefits of particular products or services.

Cases Addressing Health Claims for OTC Drugs, Devices, Foods, and Dietary Supplements

The Commission is responsible for making sure that advertising about the health benefits of over-the-counter drugs, devices, foods, and dietary supplements is truthful, not misleading and substantiated by solid scientific support. The Commission closely coordinates its efforts in these areas with the Food and Drug Administration, which has primary responsibility for the safety and labeling of these products.[3] The most dramatic growth in health-related marketing has been in the dietary supplement industry, a category that includes vitamins, minerals, herbs and hormones. It is estimated that more than 100 million U.S. consumers use supplement products for a wide variety of health-related benefits.

Older consumers may be particularly vulnerable to false or misleading claims about the safety and health benefits of OTC drugs, devices, foods, dietary supplements, and health care services because the marketing of such products and services often relates to conditions associated with aging. From January 1999 to August 2001, the Commission conducted a number of initiatives as part of its continuing efforts to ensure that consumers are presented with truthful and accurate information about the health benefits of such products. In June 1999, the Commission launched Operation Cure.all – a comprehensive law enforcement and consumer education campaign directed at protecting consumers from Internet health fraud -- and announced settlements of allegations that four sets of respondents made deceptive and unsubstantiated health claims concerning "miracle cures" for serious illnesses.

? In *Arthritis Pain Care Center (APCC), et al., Docket No. C-3896* (consent order issued on Sept. 7, 1999), the Commission complaint challenged as unsubstantiated claims that CMO, purportedly a fatty acid derived from beef tallow, cures most forms of arthritis by permanently modifying the immune system, and alleged that claims about certain scientific studies, including studies at the National Institutes of Health, were false. The consent order prohibits APCC from making any unsubstantiated claims for CMO or any food, drug, dietary supplement or program and from misrepresenting the results of any tests or research.

? In *Body Systems Technology, Inc. (BST), Docket No. C-3895* (consent order issued on Sept. 7, 1999), the Commission complaint alleged that the company lacked substantiation for its claims that shark cartilage capsules and products containing Cat's Claw were effective treatments for cancer, arthritis, and other diseases, and falsely represented that scientific studies established their efficacy. The consent order prohibits similar unsubstantiated claims for any product or program and requires the company to make refunds to all purchasers of these products during a proscribed time period.

? In *Magnetic Therapeutic Technologies, Inc., et al., Docket No. C-3897* (consent order issued on Sept. 7, 1999), the Commission complaint challenged as unsubstantiated claims that MTT's magnetic therapy devices could alleviate medical problems and diseases such as cancer and high blood pressure. The consent order prohibits the respondents from making similar unsubstantiated claims for such products, and from making other unsubstantiated claims about the health benefits, performance, or efficacy of any product or program.

? In *Pain Stops Here! Inc., et al., Docket No. C-3898* (consent order issued on Sept. 7, 1999), the Commission complaint alleged that PSH made unsubstantiated claims that its magnetic therapy devices were effective in treating ailments such as cancer, liver disease and arthritis, and that their efficacy was supported by scientific studies. The consent order prohibits those claims and any other unsubstantiated claims about the performance, safety, efficacy, or health benefits of any product or program.

In April 2000, as the second part of Operation Cure.all, the Commission announced settlements with three sets of Internet companies arising from the firms' marketing of certain products as effective treatments or cures for diseases such as arthritis, cancer, diabetes, and AIDS.

? In *Michael D. Miller, d/b/a Natural Heritage Enterprises, Docket No. C-3941* (consent order issued on May 16, 2000), the Commission complaint alleged that the respondents made unsubstantiated claims on Internet sites that Essiac Tea is effective in curing diseases such as cancer, diabetes and AIDS/HIV. The consent order, *inter alia*, required the respondents to pay $17,500 in consumer redress, and to send notices to all consumers who purchased their Essiac Tea products that Essiac Tea has not been demonstrated to be an effective remedy in fighting cancer or any other disease. The consent order also prohibits the respondents from making unsubstantiated claims for Essiac Tea and any food, drug, dietary supplement or program, and from misrepresenting the results of any tests, study or research.

? In *CMO Distribution Centers of America, Docket No. C-3942* (consent order issued on May 16, 2000), the Commission complaint alleged that the respondents made unsubstantiated claims that CMO™ (cetylmyristoleate) capsules would regulate and normalize the immune system, cure arthritis and reverse the effects of the disease, and be effective in treating other conditions such as asthma and cancer; and made false claims about certain scientific studies. The consent order requires the respondents to offer refunds to consumers who purchased the product for personal use or that of their families, and prohibits the respondents from making unsubstantiated health claims for CMO, or for any other food, drug, dietary supplement or program, and misrepresenting the results of any tests, study or research..

? In *EHP Products, Docket No. C-3940* (consent order issued on May 16, 2000), the

Commission complaint alleged that the respondent made unsubstantiated efficacy claims for its CMO product, Myristin® -- including claims that the product provides long term relief from arthritis symptoms and may prevent rheumatoid arthritis and osteoarthritis -- and misrepresented that scientific studies or the issuance of patents prove the effectiveness of Myristin®. The consent order required the respondent to offer refunds to consumers who purchased the product for personal use or that of their families, and in addition prohibits the respondents from making unsubstantiated health claims for CMO, or for any other food, drug, dietary supplement or program, and from misrepresenting the results of any tests, study or research.

In June 2000, as the third part of Operation Cure.all, the Commission announced the filing of a complaint in *FTC v. Lane Labs-USA, Cartilage Consultants, Inc., I. William Lane, and Andrew J. Lane, Civ. Action No. CV-00-3174(WGB)* (D. New Jersey)(announced on June 29, 2000). The U.S. District Court complaint alleged, *inter alia*, that the defendants made unsubstantiated claims about the efficacy of "BeneFin," a shark cartilage product, and "SkinAnswer," a skin cream, to prevent, treat and cure cancer.[4] The Commission approved two stipulated final orders for permanent injunction settling the complaint; both prohibit the defendants from representing without substantiation that BeneFin or any other shark cartilage product prevents, treats or cures cancer -- or that SkinAnswer, or any other glycoalkaloid product, prevents, treats or cures skin cancer -- and from making any unsubstantiated health-related claims about any food, drug or dietary supplement. The orders also prohibit the defendants from misrepresenting the existence, content or results of any tests, studies, or research in connection with the marketing of any food, drug or dietary supplement; and from misrepresenting that any government agency has evaluated the efficacy or safety of any food, drug or dietary supplement when marketing such product. In addition, the order against Lane Labs requires the firm to pay a $1 million judgment, with $550,000 to be devoted to consumer redress or disgorgement, and the remaining $450,000 to be used to pay for shark cartilage and a placebo in a clinical study of shark cartilage sponsored by the National Cancer Institute and Lane Labs.

In June and July 2001, Operation Cure.all continued with the announcement of eight cases targeting companies marketing a variety of devices, herbal, products, and other dietary supplements as purported treatments or cures for cancer, HIV/AIDs, arthritis, hepatitis, Alzheimer's, diabetes, and many other diseases.

? In *Panda Herbal International, Inc., et al, Docket No. C-4018* (consent order issued on July 30, 2001), the complaint alleged that the respondents made unsubstantiated efficacy claims for "Herbal Outlook" -- a dietary supplement containing St. John's Wort -- and for "Herb Veil 8," a topical ointment, and falsely claimed that Herbal Outlook has no known contraindications or drug interactions. The consent order requires the respondents to pay full refunds to certain Herb Veil 8 purchasers, and to include -- in advertising for products containing St. John's Wort -- warnings about the potentially dangerous interaction between St. John's Wort and certain prescription drugs, including drugs prescribed to treat HIV infections.

? In *ForMor, Inc., et al., Docket No. C-4021* (consent order issued on July 30, 2001), the complaint alleged that the respondents made false and unsubstantiated safety and efficacy claims for dietary supplement products containing St. John's Wort, colloidal silver and shark cartilage. The consent order requires the respondents to pay refunds to certain colloidal silver and "Ultimate II Shark Cartilage Concentrate" purchasers, and to include -- in advertising for products containing St. John's Wort -- warnings about the potentially dangerous interaction between St. John's Wort and certain prescription drugs, including drugs prescribed to treat HIV infections.

? In *MaxCell BioScience, Inc., et al., doing business as Oasis Wellness Network, Docket No. C-4017* (consent order issued on July 30, 2001), the complaint alleged that the respondents made false and unsubstantiated anti-aging claims for a dietary supplement product containing the hormone DHEA, and for an at-home urine test which purportedly permitted consumers to gauge their overall health and youthfulness. The consent order requires the respondents to pay $150,000 in consumer redress, and prohibits them from making any unsubstantiated representations about the health benefits of their products or any other food, dietary supplement or drug.

? In *Robert C. and Lisa M. Spencer, doing business as Aaron Company, Docket No. C-4019* (consent order issued on July 30, 2001), the complaint alleged that the respondents made false and unsubstantiated safety and efficacy claims for dietary supplement products called Colloidal Silver and Chitosan with Vitamin C, and made unsubstantiated claims that "Ultimate Energizer" -- a product containing ephedra (ma huang) – is safe and has no side effects. The consent order prohibits the respondents from making any unsubstantiated claims about the health benefits, performance, safety, or efficacy of any covered product or service, and requires all future advertising and labeling for products containing ephedra to disclose that they contain "ephedra or ephedrine alkaloids, which can have dangerous effects on the central nervous system and heart and can result in serious injury."

? In *Michael Forrest, doing business as Jaguar Enterprises of Santa Ana, also known as Jaguar Enterprises, Docket No. C-4020* (consent order issued on July 30, 2001), the complaint alleged that the respondents made unsubstantiated claims that their electronic therapy devices would cure or prevent cancer and other serious diseases and false and unsubstantiated efficacy and safety claims for "Miracle Herbs," an herbal product they promoted as a treatment for all types of cancer, AIDS and bacterial and viral infections. The consent order requires the respondent to offer refunds to purchasers of the products at issue, and prohibits him from making unsubstantiated claims about the health benefits, performance, safety, or efficacy of their products or services and from misrepresenting the results of any test, study or research.

? In *FTC v. Western Dietary Products Co., et al.* (W.D.Wash.)(announced on June 14, 2001), the Commission alleged in a U.S. District Court complaint that the defendants made unsubstantiated representations that their herbal formulas and herbal cure packages could treat and cure Alzheimer's, diabetes, arthritis, HIV/AIDs, and cancer -- and make surgery and chemotherapy unnecessary for persons with cancer -- and that their "Zapper Electrical Unit" could treat and cure Alzheimer's and HIV/AIDs. The defendants agreed to entry of a preliminary injunction, and the litigation continues.

? In *FTC v. Western Botanicals, Inc., et al., Civ. Action No. CIV.S-01-1332 DFL GGH*

(E.D.Cal.)(announced on July 13, 2001), the Commission filed a U.S. District Court complaint alleging, *inter alia*, that the defendants made unsubstantiated claims that dietary supplement products containing comfrey were beneficial in the treatment of a variety of serious diseases and health conditions, and false claims that the products were safe. Subsequently, the Commission approved a stipulated permanent injunction that prohibits the defendants from marketing comfrey products for internal use or use on open wounds; requires the defendants to possess substantiation for all safety and efficacy claims; and requires a safety warning on all the company's other products containing comfrey.

? In *FTC v. Christopher Enterprises, Inc., et al., Civ. Action No. 2:01 CV-0505 ST* (D.Utah)(announced on July 6, 2001), the Commission filed a U.S. District Court complaint alleging that these defendants also made allegedly false safety claims and unsubstantiated efficacy claims for products containing comfrey. The Commission approved a stipulated preliminary injunction which, *inter alia*, prohibits the defendants from marketing comfrey products for internal use or use on open wounds; requires them to have substantiation for all safety and efficacy claims; and requires a safety warning on all the company's other products containing comfrey.

The Commission effected a number of other law enforcement actions addressing allegedly unsubstantiated or otherwise deceptive claims for dietary supplements during the period from January 1999 through August 2001.

? In *American Urological Corp., et al.*, Civ. No. 1:98-CV-2199(JOF) (N.D. Ga.)(settlement announced on May 3, 1999), the Commission filed a U.S. District Court complaint alleging that the defendants made false and unsubstantiated claims for various supplement products, including one called "Vaegra," to treat impotence. In particular, the defendants claimed that the products had been developed by legitimate medical firms and that they had been proven effective in eliminating impotence in 68 to 94 percent of men. The stipulated permanent injunction imposed an $18.5 million judgment on the defendants, required the individual defendant to post a $6 million performance bond for 10 years before marketing any impotence treatment, and barred all defendants from making unsubstantiated health-related claims about any food, drug or dietary supplement.

? In *FTC v. Rose Creek Health Products, Inc., Civ. No. CS-99-0063-EFS* (E.D.Wash.)(settlement announced on May 1, 2000), the Commission alleged in a U.S. District Court complaint that the defendants made false and unsubstantiated health claims in advertisements for a nutritional supplement called "Vitamin O". The Commission sought preliminary and permanent injunctions to halt dissemination of the defendants' advertisements and resulting consumer injury. Subsequently, the Commission approved a consent decree which, among other things, requires the defendants to pay $375,000 in consumer redress.

? In *FTC v. Rexall Sundown , Civ. Action No. 00-706-CIV-Ferguson* (S.D.Fla.)(announced on July 20, 2000), the Commission filed a U.S. District Court complaint alleging that the defendant made false and unsubstantiated claims while marketing its dietary supplement, Cellasene™, as a purported cellulite treatment.

? In *Med Gen, Inc., et al, File No. 002 3211* (announced on March 29, 2001) and *Tru-Vantage International, File No. 002 3210* (announced on March 29, 2001), the Commission complaint alleged that the respondents -- respectively the marketer of "Snorenz," a throat spray, and the producer of infomercials about the product -- made unsubstantiated representations that the spray is an effective treatment for snoring and sleep apnea. In addition to requiring the respondents to have scientific evidence for these and other claims, the consent orders require the respondents to include warnings in their advertisements for snoring remedies that have not been shown to be effective in treating sleep apnea.

From January 1999 through August 2001, the Commission also continued to pursue law enforcement initiatives against firms making unsubstantiated or otherwise deceptive claims for products other than dietary supplements, and for particular health care services. For example, in *Novartis Corp., et al., Docket No. 9279*, the Commission issued a complaint alleging that the respondents made unsubstantiated, material, and therefore deceptive representations that Doan's Pills -- nationally advertised analgesic tablets -- were more effective in relieving back pain than other over-the-counter pain relievers. Thereafter, the Commission issued an Opinion finding liability and a Final Order requiring the respondents, *inter alia*, to disseminate corrective advertising. On August 18, 2000, the Court of Appeals for the District of Columbia Circuit issued an opinion affirming the Commission Decision and Final Order.

Similarly, in *American College for Advancement in Medicine, Docket No. C-3882* (consent order issued on June 22, 1999), the Commission accorded final approval to a consent order -- settling allegations in an accompanying administrative complaint -- which, *inter alia*, prohibits the respondents from making unsubstantiated and false advertising claims that nonsurgical, EDTA "chelation therapy" is effective in treating atherosclerosis, and that the effectiveness of the therapy has been proven by scientific studies. The consent order also prohibits ACAM from misrepresenting the existence, validity, results, or contents of any test, study or research in connection with the advertising or promotion of chelation therapy.

Last year, the Bayer Corporation launched a $1 million consumer education campaign to settle the allegations in a U.S. District Court complaint filed at the behest of the Commission in *United States v. Bayer Corp., Civ. Action No. 00-132* (NHP) (D.N.J.)(settlement announced on Jan. 11, 2000). The complaint alleged that Bayer represented -- without substantiation and in violation of a previous FTC order -- that a regular aspirin regimen is appropriate for the prevention of heart attacks and strokes in the general adult population. The complaint alleged, in particular, that the claims at issue were unsubstantiated because some adults are less likely to benefit from a daily aspirin regime and because some may suffer adverse health effects from taking aspirin on a daily basis. Under the resulting consent decree, Bayer distributed a free brochure entitled "Aspirin Regimen Therapy: Is It Right For You?"; more than 500,000 copies of the brochure were distributed through doctors' offices. In addition, Bayer disseminated full-page print advertisements in major magazines promoting a toll-free number (1-800-332-2253) that consumers could call to order the brochure. The consumer education campaign was in part intended to help clear up possible confusion about the proper use and safety of aspirin in the prevention of heart attack and stroke. In addition, the consent decree requires Bayer to include --

in advertising that makes claims about the benefits of regular aspirin use for prevention of heart attacks or strokes -- a disclosure that states, "Aspirin is not appropriate for everyone, so be sure to talk to your doctor before you begin an aspirin regimen."

The Commission pursued a number of other law enforcement actions against marketers of particular types of health care products and services. For example, in *The Quigley Corporation, Docket No. C-3926* (consent order issued on Feb. 10, 2000), and *QVC, Inc., Docket No. C-3955* (consent order issued on June 14, 2000), the Commission issued consent orders settling allegations that the respondents -- respectively the manufacturer of Cold-Eeze and Cold-Eeze brand zinc lozenges and the operator of the Home Shopping Network -- represented, without substantiation, that the lozenges can prevent colds and alleviate allergy symptoms. The consent orders prohibit the respective respondents from making the challenged representations without substantiation, for the products at issue or any other food, drug or dietary supplement. In addition, the consent order against Quigley prohibits the respondent from representing, without substantiation, that any food, drug or dietary supplement can or will treat, cure or prevent disease, or have any effect on the structure or function of the human body; the consent order against QVC imposes the same prohibition with respect to dietary supplements.

Similarly, in *FTC v. Worldwidemedicine.com et al., Civ. Action No. CV-S-00-0861-JBR* (D.Nev.)(announced on July 12, 2000), the Commission approved stipulated final judgments and orders settling allegations in a U.S. District Court complaint that the defendants promoted Viagra and Propecia prescriptions by making false medical claims. The orders prohibit the defendants from misrepresenting medical and pharmaceutical arrangements; prohibit them from misrepresenting their use of credit card information; and prohibit them from misrepresenting any other material fact about the scope or nature of defendants' goods, services or facilities.[5]

In *SmartScience Laboratories, Inc., et al., Docket No. C-3980* (consent order issued on Nov. 2, 2000), the Commission issued a consent order resolving allegations that the respondents made unsubstantiated claims that their topical skin cream, "JointFlex," would eliminate significant pain due to disabling joint conditions, crushed vertebrae, herniated disks, and other conditions. The consent order prohibits the respondents from making claims about the efficacy of JointFlex or any drug or dietary supplement in reducing, relieving or eliminating pain from any source, or about the health benefits, performance, safety or efficacy of a product, unless they have competent and reliable scientific evidence to substantiate the claims. The consent order also prohibits misrepresentations about the results of tests, studies, surveys and research with respect to any product and would require that testimonials be truthful and not deceptive.

And in *ValueVision International, Inc., Docket No. C-4022* (consent order issued on Aug. 22, 2001), the Commission issued a consent order settling complaint allegations that the respondent, a cable shopping service, made unsubstantiated claims for a variety of weight loss, cellulite treatment, and anti-hair loss products on television and over the Internet. The consent order requires ValueVision to offer credit or refunds to certain purchasers of the covered products, and prohibits the respondent from making a variety of unsubstantiated representations for any food, drug, dietary supplement, cellulite-treatment product, or weight loss program.

Cases Addressing Claims For Diet and Weight Loss Products and Services

As part of its continuing effort to ensure that consumers get accurate and reliable information about weight loss products and programs, the Commission continued to implement "Operation Waistline," a coordinated, long-term consumer education and law enforcement program designed to alert consumers to misleading and deceptive weight loss claims, to steer them to accurate information about healthy weight loss, and to stop those promoters in the industry who violate the law.

- ? In *FTC v. SlimAmerica, Inc., FTC v., No. 97-6072-Civ-Ferguson* (S.D. Fla.)(announced on July 19, 1999), the Commission alleged in a U.S. District Court complaint that the defendants made a variety of deceptive claims for their purported weight loss products, including that the "Super-Formula" diet product could "blast" up to 49 pounds off a user in only 29 days, "obliterate" 5 inches from waistlines, and "zap" 3 inches from thighs, without dieting or exercising. Thereafter, the District Court issued a final judgment which, *inter alia*, requires the defendants to pay $8,374,586 in consumer redress.
- ? In *Fitness Quest, Inc., Docket No. C-3886* (consent order issued on July 26, 1999), the Commission issued a consent order settling allegations in an accompanying administrative complaint that the respondents made unsubstantiated weight loss and weight maintenance claims in infomercials and on the Internet. The consent order prohibits such unsubstantiated claims and provides that testimonials or endorsements in the respondent's advertising materials must either represent the typical or ordinary experience of consumers or disclose the generally expected results or state that consumers should not expect similar results.
- ? In *Weider Nutrition International, Inc., Docket No.* C-*3983* (consent order issued on Nov. 15, 2000), the Commission issued a consent order against a leading manufacturer and marketer of nutritional supplements, vitamins and sports nutrition products. The consent order resolved allegations in an accompanying administrative complaint that the respondents made unsubstantiated efficacy and safety claims in their advertisements for weight loss dietary supplement products called "PhenCal" and "PhenCal 106," including claims that the products had been proven to cause weight loss and prevent the regaining of lost weight. The consent order requires Weider to pay $400,000 in consumer redress and have competent and reliable scientific evidence when making any weight loss, safety, disease benefit, or comparative claim in the promotion of its products or programs. It prohibits him from misrepresenting the existence, contents, validity, results, conclusions or interpretations of any test, study or research.

The Commission also initiated a law enforcement initiative addressing representations made for two dietary supplements -- "Fat Trapper" and "Exercise In A Bottle"-- in two infomercials. In *FTC v. Enforma Natural Products, Inc., et al.*, CV 04376-JSL (CWx) (C.D. Cal.)(settlements announced on April 26, 2000), the Commission alleged in a U.S. District Court complaint that the defendants made false and unsubstantiated weight loss claims for the two supplements. The Commission simultaneously approved two stipulated final orders settling the complaint allegations, one of which required the defendants to pay $10 million in consumer redress. Both orders also: (1) prohibit the defendants from making unsubstantiated claims that any product, service or program causes or maintains weight loss or avoids weight gain without dieting or exercise, prevents fat absorption, increases metabolism, burns fat, or allows weight loss even if users eat high fat foods; (2) require the defendants to include with future weight loss claims a clear and prominent disclosure that reducing calorie intake and/or exercising more is necessary to lose weight; (3) require the defendants to have scientific substantiation for any claims about the health or weight loss benefits, performance, safety or efficacy of any product, service or program; and (4) prohibit the defendants from making false claims about the existence or results of any tests, studies or research.

In a subsequent U.S. District Court complaint in *FTC v. Steven Patrick Garvey, Garvey Management Group, Inc., Lark Kendall, Mark Levine, David Richmond, and Modern Interactive Technology, Inc.,* CV 00-09358-GAF (CWx) (C.D. Cal.)(announced on Sept. 1, 2000), the Commission alleged that Garvey and Kendall -- who appeared as co-hosts in infomercials for Enforma Natural Products such as the "Fat Trapper" and "Exercise in a Bottle" -- made deceptive weight loss claims for the products. Thereafter, the Commission approved a Stipulated Final Order and Settlement of Claims for Monetary Relief as to Lark Kendall (Nov. 15, 2000), which required her to assign to the FTC for consumer redress her right to collect money she is owed for her appearance in the first Enforma infomercial and which contains injunction provisions similar to those used in the *Enforma Natural* case. Recently, the Court granted in part defendants' motion for summary judgment on *res judicat*a grounds. The Court was persuaded that the Commission's settlement in the *Enforma Natural* case precluded the Commission's case against defendants Modern Interactive, Levine and Richmond in the *Garvey* case. The Commission has moved for reconsideration of this ruling. The Court denied defendants' summary judgment motion as to defendants Garvey and Garvey Management Group, so that part of the case continues.

FINANCIAL PRACTICES INITIATIVES

The Commission enforces several federal credit statutes that affect more than 113 million consumers with credit cards and many millions more who apply for credit and loans. Credit fraud and other violations of credit statutes continue to affect consumers of all ages and income levels. Such abuses can be particularly devastating to seniors who rely on credit to augment their income, and who may be more receptive to credit offers that are "too good to be true."

Home Equity Lending Abuses Cases

Abuses in subprime home equity markets may disproportionately affect elderly borrowers because they are more likely to have equity in their homes.[6] The Commission has been active in challenging lenders who are engaged in abusive lending practices. These efforts include filing complaints and consent orders for alleged violations of the Home Ownership and Equity Protection Act ("HOEPA"), the Truth in Lending Act ("TILA") and its implementing regulation, Regulation Z, and the FTC Act. The Commission also has been working with the States to increase and coordinate enforcement efforts, and continues to implement extensive consumer education efforts designed to help consumers avoid potential home equity lending abuses.

In January 1998, in *FTC v. Capital City Mortgage Corporation* (D.D.C.)(announced on Jan. 30, 1998), the Commission filed a U.S. District Court complaint against Capital City and its president, Thomas K. Nash, alleging that the defendants violated the FTC Act, the Equal Credit Opportunity Act ("ECOA"), the TILA, and the Fair Debt Collection Practices Act ('FDCPA"). The complaint alleges that the defendants engaged in deceptive and unfair practices against borrowers at the beginning, during and end of the lending relationship, in violation of Section 5 of the FTC Act. The complaint alleges that these deceptions included:

? representing that a loan was an amortizing loan that would be paid off by making payments each month, when in fact, the loan was an interest-only balloon loan with the entire loan principal amount due after all of the monthly payments were made;
? inflating monthly payment amounts, overdue balances, arrears, service fees, and advances with phony charges;
? misrepresenting the amount of money needed to pay off the loan;
? charging the borrower interest on the entire loan amount, even though a portion of the principal was withheld;
? foreclosing on borrowers who were in compliance with their loan terms; and
? failing to release the company's liens on title to borrowers' homes even after the loans were paid off.

The complaint further alleges that, after foreclosing, Capital City would buy the properties at auction for prices much lower than the appraised value of the properties. the complaint also alleges that Capital City violated the TILA in various ways, including by understating the finance charge and annual percentage rate for particular loans.[7] The litigation in this matter continues.

In July 1999, the Commission approved consent judgments in seven cases against subprime mortgage lenders around the country for alleged violations of the HOEPA, the TILA, Regulation Z, and the FTC Act. *See FTC v. Cooper* (C.D.Cal.); *FTC v. Capitol Mortgage Corp.* (D.Utah); *FTC v. CLS Financial Services, Inc.* (W.D.Wash.); *FTC v. Granite Mortgage, LLC* (E.D.Ky.); *FTC v. Interstate Resource Corp.* (S.D.N.Y.); *FTC v. LAP Financial Serv., Inc.* (W.D.Ky.); and *FTC v. Wasatch Credit Corp*. (D.Utah)(all announced on July 29, 1999). These cases were part of "Operation Home Inequity," a Commission law enforcement and consumer education campaign seeking to enforce HOEPA and curb abusive practices in subprime mortgage lending. The court orders in these cases included injunctive provisions prohibiting violations of the HOEPA, the TILA, Regulation Z, and the FTC Act. Moreover, six of the orders together require the defendants to pay consumer redress totaling $572,500. In addition, two of the orders require the covered defendants to obtain performance bonds before they offer or extend specified credit in the future; a third order bans the covered defendants from any future involvement with high-cost loans secured by consumers' homes.

In October 1999, in *Fleet Finance, Inc. and Home Equity U.S.A., Inc., Docket No. C-3899* (consent order issued on Oct. 5, 1999), the Commission issued a consent order settling charges that Fleet Finance violated the TILA, Regulation Z, and the FTC Act by failing to provide accurate, timely disclosures of the costs and terms of home equity loans (and other consumer credit transactions) to consumers and by failing to provide or to provide accurately information to consumers about their home equity rescission rights. In transactions in which Fleet Finance acquired or retained a security interest in the consumers' principal dwellings, the complaint alleged that the company failed to provide consumers with the right to rescind the credit transaction by, *inter alia,* (1) failing to provide consumers with notice of the right to rescind, and (2) waiving consumers' right to rescind, and disbursing funds, based on oral or other insufficient waivers. The complaint also alleged that Fleet Finance failed to provide consumers with all TILA required disclosures of the cost and terms of credit prior to the consummation of credit transactions, and failed to provide or provide accurately certain TILA disclosures, including the annual percentage rate. In addition, the complaint alleged that Fleet Finance failed to retain disclosures and rescission notices for two years, in violation of Regulation Z. The order required Fleet Finance and its successor companies, Home Equity U.S.A, to pay $1.3 million for consumer redress and administrative costs. The order also prohibited the entities from future violations of the TILA and Regulation Z and from various misrepresentations of credit costs and terms.

In March 2000, in *United States v. Delta Funding Corporation and Delta Financial Corporation* (E.D.N.Y.)(settlement announced on March 30, 2000), the Commission secured a stipulated federal court order settling allegations in an accompanying U.S. District Court complaint against Delta, a national subprime mortgage lender. The Commission filed the complaint in conjunction with the Department of Justice and the Department of Housing and Urban Development, and it included allegations that this mortgage lender engaged in a pattern or practice of asset-based lending; that is, extending high cost loans based on the borrower's collateral -- in determining whether the borrower would be able to make the scheduled payments to repay the obligation -- rather than by considering the borrower's current and expected income, current obligations, and employment status. The complaint also alleged that the defendants included prohibited terms in HOEPA loans, such as certain prepayment penalties and increased interest rates after default; the complaint alleged that these practices violated the HOEPA, the TILA and Regulation Z. The stipulated order, *inter alia*, makes consumers harmed by Delta's HOEPA violations eligible for redress under an agreement between Delta and the New York State Banking Department; pursuant to this agreement, $12.25 million is available to compensate borrowers for various alleged state and federal law violations. The stipulated order also imposes injunctive relief under the HOEPA, the TILA, and Regulation Z.

In July 2000, in *FTC v. Nu West, Inc., et al*. (W.D.Wash.)(settlement announced on July 18, 2000), the Commission settled charges that another subprime mortgage lender, Nu West, and its principal violated the HOEPA, the TILA, Regulation Z, and the FTC Act. The complaint alleged that the defendants failed to disclose to consumers material loan costs and other information at least three days before closing; included prohibited balloon payments and increased interest rate provisions in loan documents; and made prohibited direct payments to home improvement contractors, in violation of the HOEPA, the TILA, and Regulation Z. The complaint further alleged that the defendants failed to disclose or disclose accurately various loan terms, including the annual percentage rate, the finance charge, and information about the right of rescission. The stipulated consent decree enjoined future law violations, and required the defendants to pay more than $160,000 in consumer redress and to reform open loans to nullify prohibited provisions.

In October 2000, in *FTC v. First Alliance Mortgage Co., et al*. (C.D.Cal.)(announced on October 4, 2000), the Commission filed a U.S. District Court complaint against First Alliance and two affiliate companies, which are among the nation's largest subprime home equity lenders. The complaint charged these companies with violations of the TILA, Regulation Z and the FTC Act. According to the complaint, the defendants target, through telemarketing and direct mail solicitations, homeowners with poor credit histories who may experience difficulty securing conventional home equity financing. The complaint alleges that the defendants' loan officers, through use of the "Track" -- a lengthy, thirteen-step sales presentation -- made misleading statements about material terms of the loan and the meaning of material information used in the TILA disclosure, in violation of the FTC Act. The complaint also alleges that the defendants misrepresented that the total amount borrowed, upon which interest accrues, is the amount financed that appears on the TILA disclosure statement, when, in fact, that amount does not include any fees financed by the borrower. In addition, the complaint alleges that the defendants misled consumers about the existence and amount of origination fees (typically 10 percent of the loan) and about the interest rate and monthly payments of their short-term "teaser rate" adjustable rate mortgages ("ARMs"). The complaint further alleges that the defendants did not have a reasonable basis to substantiate their claims that consumers will save money when consolidating debts through their loans. In addition, the complaint alleges that the defendants have failed to provide borrowers with ARM loans with information required by the TILA and Regulation Z which explains the ARMs. The complaint seeks an order awarding consumer redress and injunctive relief.

In December 2000, in *FirstPlus Financial Group, Inc. Docket No. C-3984* (consent order issued on Nov. 28, 2000), the Commission issued a consent order settling charges that FirstPlus's now bankrupt subsidiary, FirstPlus Financial, Inc., made misrepresentations in its advertisements for various credit products, including "high-loan-to-value" second mortgage loans and home equity loans. The Commission alleged that the advertisements misrepresented the amount of money that consumers would save when consolidating existing debts into a FirstPlus home equity loan. The Commission also alleged that the advertisements failed to adequately disclose key information about the loans. The consent order prohibited FirstPlus from misrepresenting its loan products, and required the company to use reasonable assumptions when creating savings comparisons, and to fully disclose all information necessary to evaluate those comparisons.

In March 2001, in *FTC v. Citigroup Inc., et al*. (N.D.Ga.)(announced on March 6, 2001), the Commission filed a U.S. District Court complaint alleging that The Associates and successors Citigroup and Citifinancial engaged in systematic widespread abusive lending practices. The complaint alleges, in particular, that the defendants lured consumers into high cost debt consolidation loans through misleading statements and half-truths about what the costs would be; and

> [e]ngaged in numerous deceptive practices and other violations of law to induce consumers to take out or refinance loans with high interest rates, costs and fees, and to purchase high-cost credit insurance.

The complaint alleges that the defendants used deceptive marketing practices, in violation of the FTC Act, by, in particular, representing that consumers would "save money" based on the false assumption of monthly payment savings for the entire loan term (even though current debts being consolidated were short term); comparing payments without taxes and insurance to current mortgage payments with taxes and insurance; failing to adequately disclose high fees and costs; and failing to adequately disclose balloon payments. The complaint also alleges that The Associates engaged in credit insurance packing in violation of the FTC Act by: automatically quoting a loan amount with a package of single-premium credit insurance products, called "total payment protection," added to the principal amount of the loan and financed (at rates usually more than 10 percent); misleading consumers into believing "total payment protection" was offered without additional cost (when in fact it sometimes involved thousands of dollars in extra costs); making misrepresentations about insurance coverage (such as failing to disclose that, in many instances, the length of coverage was shorter than the loan term); and making misrepresentations that consumers could cancel the insurance and secure a full refund (when only the cost of the premium is credited, not extra points paid or interest paid to date).

In addition, the complaint alleges that The Associates used abusive and unfair debt collection practices in violation of the FTC Act, including disclosing the debt to third parties; calling the debtor at work after having been told not to do so; and making repeated phone calls. The complaint also alleged violations of the TILA (splitting a loan in two to avoid providing the right of rescission); the ECOA (failing to retain records); and the FCRA (using credit reports for impermissible marketing purposes). The case is now being litigated.

Equal Credit Opportunity Act Cases

Among other things, the Equal Credit Opportunity Act ("ECOA"), 15 U.S.C. § 1691 *et seq.*, prohibits creditors from discrimination based on age in determining whether or not to extend credit. The ECOA's implementing Regulation B prohibits creditors from discounting or refusing to consider an applicant's income from a pension or other retirement benefit or from denying credit because an applicant, on the basis of age, does not qualify for credit-related insurance. The ECOA also prohibits discrimination based on the fact that an applicant's income is derived from a public assistance source, including Social Security, which is more likely to be received by the elderly. To help detect discrimination in mortgage credit based on age or other prohibited factors (such as sex or race), Regulation B requires mortgage lenders to take written applications for credit and to record the race/national origin, sex, marital status, and age of applicants. The ECOA also requires written notice to consumers of the reasons for a denial of credit. Where the adverse action is based on a report from a consumer reporting agency, the Fair Credit Reporting Act ("FCRA") requires the creditor to disclose this as well. The TILA requires that all borrowers receive accurate disclosure of the cost of credit.

As noted above, in January 1998 the Commission filed suit in *FTC v. Capital City Mortgage Corporation* against a Washington, D.C. area mortgage lender. In addition to alleging violations of the FTC Act, the TILA, and the FDCPA, the complaint filed in that case also alleges that the defendants violated the ECOA and Regulation B. The complaint alleges, in particular, that "[i]n many instances, defendants' borrowers are minority and/or elderly persons living on fixed or low incomes in Washington, D.C., Maryland, and Virginia, who borrow primarily for personal, family, or household purposes." The complaint alleges that Capital City makes high interest rate (20 to 24 percent) loans to those borrowers and that the loans are often interest-only balloon loans in which a borrower, after making payments for the term of the loan, still owes the entire amount of the loan principal. These loans often are secured by the borrowers' homes and typically are made based on the worth of the home rather than on the borrowers' creditworthiness or income.

The Commission complaint alleges that the defendant company and its president violated the ECOA and Regulation B by failing to take written applications for mortgage loans; failing to collect required information about the race/national origin, sex, marital status, and age of applicants; failing to provide written notice of adverse action; or -- when providing notice of adverse action -- failing to provide the applicant with the correct name and address of the Federal Trade Commission, the federal agency that administers compliance with the ECOA with respect to Capital City. The lawsuit is pending in the U.S. District Court for the District of Columbia, and in addition to the other relief described above, the Commission is seeking civil penalties and injunctive relief for ECOA violations.

In May 1999, in *United States v. Franklin Acceptance Corporation* (E.D.Pa.)(settlement announced on May 13, 1999), the Commission approved a consent decree resolving allegations in a U.S. District Court complaint that Franklin, an automobile finance company, discriminated against applicants on the basis of the fact that an applicant's income derived from public assistance sources -- including certain Social Security benefits -- as well as on the basis of sex and marital status, and when taking adverse action on an application, failed to provide notice as required under the ECOA and the FCRA. The complaint in particular alleges that Franklin discriminated against applicants who derived their income from public assistance by discounting or refusing to consider such income. The complaint also alleges that, when taking adverse action on an application, Franklin failed to provide the applicant with written notification of the action taken, failed to disclose the specific reasons for the action taken or to disclose the applicant's right to request such reasons, and, when adverse action was based on a report from a consumer reporting agency, failed to provide notice as required under the FCRA. The defendants agreed to pay a civil penalty of $800,000, and to the entry of a permanent injunction.

Debt Collection Practices Cases

Each year, the Commission receives a large number of consumer complaints alleging harassing and abusive behavior by debt collectors. During the January 1999-August 2001 period, the Commission filed a number of law enforcement actions, and continued a number of other actions initiated in prior years, against debt collectors for violations of the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. §§ 1692-1692*o*.

In February 1999, in *United States v. Perimeter Credit, L.L.C. and Account Portfolios, Inc.* (E.D.Pa.)(settlement announced on May 13, 1999), Account Portfolios and its Perimeter Credit subsidiary agreed to pay a $300,000 civil penalty to settle Commission allegations that Perimeter violated the FDCPA by, among other things, making false and misleading statements and impermissibly contacting third parties about consumers' debts. In December 1999, in *United States v. National Financial Systems, Inc.* (E.D.Pa.)(settlement announced on May 13, 1999), the Commission secured a stipulated federal court order against a New York-based collection agency that allegedly violated the FDCPA through practices such as continuing to contact consumers at work after learning that the consumers' employers prohibited such contacts, and falsely implying to consumers that failure to pay their debts could result in arrest or imprisonment. The stipulated order required NFS to pay a civil penalty of $20,000, contained broad prohibitions against future

FDCPA violations, and required NFS to inform consumers that they may stop the company from contacting them about the debt.

In March 1999, the Commission amended the complaint in *FTC v. Capital City Mortgage Corporation* described above -- against Capital City and its owner, Thomas K. Nash -- to add in-house attorney Eric J. Sanne as a defendant. The original complaint alleged among other things that Capital City and Nash violated the FDCPA by falsely representing that letters from Sanne were from a third-party collector, making false and misleading representations when collecting loan payments, and engaging in unfair or unconscionable debt collection practices. The court permitted the Commission to add Sanne as a defendant based upon the Commission's discovery during litigation of hundreds of additional debt collection letters sent by the attorney. The Commission is seeking injunctive relief for the FDCPA violations, and while discovery in the case has now ended, a trial date has not yet been set.

In August 1999, in *Federated Department Stores, Inc., Docket No.* C-3893 (consent order issued on Aug. 20, 1999), the Commission issued a consent order against one of the nation's largest retailers, settling allegations in an accompanying complaint that the company induced consumers who filed for bankruptcy protection to agree to reaffirm their Federated credit account debts in order to keep their Federated credit card and merchandise. According to the Commission's complaint, Federated falsely represented that these "reaffirmation agreements" would be filed with the bankruptcy courts, as required by law, and that consumers would be legally obligated to pay. Although the FDCPA does not apply to creditors such as Federated collecting their own debts, the Commission alleged that these practices violated Section 5(a) of the Federal Trade Commission Act. At the time Federated settled with the Commission, the company had recently entered into a settlement with a number of State Attorneys General. The consent order permitted the Commission to file an action to seek full redress if the refunds pursuant to the State settlements totaled less than $8.2 million, or if the Commission believed that Federated had failed to fulfill its obligations to make payments under its agreement with the States. The consent order also prohibits Federated from, among other things, misrepresenting that any reaffirmation agreement it obtains will be filed with the bankruptcy court. This matter is the most recent in a series of Commission cases involving major, nationwide retailers. The respondents in the other cases included Sears, Roebuck and Company; General Electric Capital Corporation; and May Department Stores Company. Consumers have received full redress for all monetary injury in these cases; the total redress provided exceeded $183 million in direct payments or reductions in cash owing.

In July 2000, in *United States v. North American Capital Corporation* ("NACC")(W.D.N.Y.)(settlement announced on July 12, 2000), the defendant agreed to pay a $250,000 civil penalty as part of a settlement to resolve Commission allegations that NACC violated the FDCPA by, among other things, discussing consumers' debts with third parties such as the consumers' employers and co-workers; harassing consumers with obscene or profane language; and making false and misleading representations, such as that consumers' wages would be garnished and their property seized if they failed to pay. In addition to the civil penalty, the consent decree settling the Commission charges includes broad prohibitions of future FDCPA violations, and requires NACC to inform consumers it contacts in writing that they may stop the company from contacting them about the debt.

SALES AND PROMOTIONAL PRACTICES INITIATIVES

Mail Or Telephone Order Merchandise Rule Cases

In issuing its initial Rule relating to mail order sales, the Commission noted that consumers with mobility problems, including older consumers, frequently order by mail. In 1994, the Commission extended the coverage of the Rule to include telephone sales; it is now called the Mail Or Telephone Order Merchandise Rule. During that rulemaking proceeding, AARP testified that, according to its consumer survey data, 27 percent of people aged 65 and older ordered products and services by telephone over a given six-month period. The Rule requires sellers to make timely shipment of orders; give options to consumers to cancel an order and receive a prompt refund or to consent to any delay; possess a reasonable basis for any promised shipping dates; and make prompt refunds. The Commission staff works closely with industry members and trade associations to obtain compliance with the Rule, and the Commission initiates law enforcement actions where appropriate.

As part of "Project TooLate.com," the Commission staff initiated an investigation to determine whether online retailers failed to deliver goods when expressly promised during the 1999 holiday season, in violation of the Mail Or Telephone Order Merchandise Rule. As noted above, the rule requires retailers to ship goods by the date promised, or if no date is promised, within 30 days of receiving the order. If a company cannot ship as promised, it is required to provide notice to the buyer with a revised shipping date, giving the buyer the opportunity to agree to the delay or to cancel the order. The U.S. District Court complaints announced as part of Project TooLate.com alleged that seven “etailers” -- CDnow, Inc.; KBkids.com LLC; Macys.com, Inc.; Franklin W. Bishop d/b/a Minidiscnow.com; The Original Honey Baked Ham Company of Georgia, Inc.; Patriot Computer Corp.; and Toysrus.com, Inc.– violated the Rule by failing to send the required delay option notices, sending notices that were deficient, and in some cases making shipping representations without a reasonable basis. Six of the complaints also alleged that the defendants (except CDnow) failed to deem certain orders canceled in the absence of a notice, in violation of Section 435.1(c) of the Rule. In addition, four of the complaints (against KBkids.com, Macys.com, Toysrus.com, and Minidiscnow.com) alleged that the defendants took orders without a reasonable basis for their shipping representations, in violation of Section 435.1(a)(1) of the Rule.

The consent decrees settling the complaints against six of the defendants required the payment of the following civil penalty amounts: Macys.com ($350,000), KBkids.com ($350,000), Toysrus.com ($350,000), CDnow ($300,000 (with $200,000 waived because of the firm’s poor financial condition)), Patriot Computers ($200,000), and The Original Honey Baked Ham Co. ($45,000). The consent decree against the seventh defendant, Minidiscnow.com, required the firm to fully reimburse each consumer who had ordered, but not received, any of the company's products. In addition, Macys.com was required to fund an Internet consumer education campaign about the Mail Or Telephone Order Merchandise Rule consisting of banner ads that alert consumers that they have certain rights when shopping online. The decrees also contain injunctive provisions prohibiting future Rule violations.

Funeral Services Cases and Other Initiatives

A funeral can cost $10,000 or more. This expensive consumer purchase is often made at an emotionally difficult time, and often is a first-time purchase. The Commission's Funeral Industry Practices Rule (16 CFR Part 453) is designed to ensure that funeral providers give consumers timely information relating to the range of funeral goods and services offered and the prices charged. The Rule also requires funeral providers to make important disclosures to consumers inquiring about funeral goods or services.

The FTC has used various enforcement approaches since the Rule became effective in 1984, including traditional investigations and test-shopping sweeps of funeral homes in various geographic areas. Over the last six years, in cooperation with State Attorneys General and AARP, the FTC has test-shopped more than 1,350 funeral homes. Since 1999, the FTC has organized test-shops of almost 500 funeral homes -- in New York, New Jersey, Connecticut, Illinois, West Virginia, Florida, New Mexico, Texas, and California, among others -- with the test-shopping being performed by FTC investigators, by state and local agency investigators, and in some instances by AARP volunteers. These test-shops are ongoing, and to date, 70 violators have been offered the opportunity to bring their funeral homes into compliance by enrolling in the FTC's non-litigation alternative, the Funeral Rule Offenders Program (FROP).

The Commission, which reviews each of its rules and guides every 10 years, is currently reviewing the Funeral Rule. The Commission initiated the Rule review by publishing in the *Federal Register* a request for comment on many issues, including the continued need for the Rule, the Rule's costs and benefits, and whether substantial changes to the rule are necessary. In response to the *Federal Register* Notice, 153 comments were submitted from industry members, consumers, consumer groups, law enforcement agencies, and others. FTC staff are carefully reviewing the comments and other information contained in the Rule review record, and are preparing a recommendation for the Commission's consideration. In connection with the Rule review, the Commission held a public workshop, at which individuals representing a wide-range of interests and organizations, including AARP, participated. The FTC has also participated in other meetings and workshops relating to the funeral industry, such as the Senate Aging Committee hearings in April 2000, and AARP's Death Care Symposium in May 2000.

Energy and Home Appliance Representations Cases

One way older consumers try to save on expenses is by cutting down on energy use in their homes. In May 2000, Intermatic -- one of the country's largest manufacturers of consumer and industrial energy control products, including appliance timers and low-voltage outdoor lighting -- agreed to pay a $250,000 civil penalty to settle FTC charges that the company violated a 1979 Commission consent order. The 1979 order prohibited the company from making unsubstantiated claims that the use of its electric water heater timer (the "Little Gray Box") results in substantial savings on water heating bills. In *United States v. Intermatic, Inc. Civ. Action No. 00-C50178* (N.D.Ill.)(announced on May 24, 2000), the U.S. District Court complaint alleged that Intermatic violated the 1979 order by making unsubstantiated energy savings claims regarding the Little Gray Box; omitting the required dishwasher disclosure on the package and in advertisements; and omitting the required disclosure on the instruction sheets for the Little Gray Box. The complaint also alleged that Intermatic made false or misleading claims that tests prove the energy savings. The consent decree settling the complaint allegations required Intermatic to pay $250,000 in civil penalties, and prohibits the firm from making any energy efficiency, efficacy, benefits, mechanism of action or performance claims about appliance timing devices unless it possesses and relies upon competent and reliable scientific evidence to support such claims. The consent decree also prohibits the firm from misrepresenting the results of scientific tests in connection with any appliance timing device.

The Commission also ensures that consumers can secure accurate information about energy usage levels for home appliances by actively enforcing its Appliance Labeling Rule.[8] The Rule requires manufacturers to disclose energy information about certain major household appliances, so that consumers can compare the energy use and efficiency of competing models. In particular, manufacturers of all covered appliances must disclose specific energy consumption or efficiency information at the point of sale in the form of an EnergyGuide label that is affixed to the covered product.[9] Required labels for appliances and required fact sheets for heating and cooling equipment must include an energy consumption or efficiency disclosure and a "range of comparability" bar that shows the highest and lowest energy consumption or efficiencies for all similar appliance models. Labels for refrigerators, refrigerator-freezers, freezers, clothes washers, dishwashers, water heaters, and room air conditioners also must contain a secondary disclosure of estimated annual operating cost based on a specified national average cost for the fuel the appliances use. The FTC Web site includes a number of brochures which explain to consumers the ways in which they can use the EnergyGuide labels to determine the energy efficiency of the appliances they purchase.

Older consumers also are interested in devices that can improve their home environment, including those that address allergies or other health problems. In December 1997, in *United States v. Alpine Industries, Inc., et al*. (E.D. Tenn.)(announced on Jan. 5, 1998), the Department of Justice filed a U.S. District Court complaint on the Commission's behalf alleging that Alpine and its principal, William J. Converse, violated a 1995 Commission consent order. The 1995 order settled allegations that Alpine and Converse had misrepresented the effectiveness of the Alpine ozone generating "air cleaning" machines, and prohibited the respondents from making unsubstantiated claims for the devices. In November 1999, the District Court jury unanimously found that Alpine and Converse had claimed that Alpine products would prevent or provide relief from various health or medical conditions -- including allergies, asthma, sinus and breathing problems, emphysema, lupus, migraine headaches and an unspecified incurable eye disease -- without having competent and reliable scientific substantiation for these claims, and therefore had violated the 1995 order. In April 2001, the District Court issued a civil penalty judgment for $1.49 million plus interest and costs against Alpine and Converse.

Living Trusts

On July 11, 2000, the Commission presented testimony before the United States Senate Special Committee on Aging about scams involving living trusts. The testimony stemmed from an AARP study showing that ownership of living trusts among low income seniors is growing dramatically and disproportionately among middle- and upper-income seniors. Although living trusts are a legitimate estate planning tool, typically consumers with low income and small estates would not ordinarily need them. The Commission testimony described how living trust scams work, and how state and local bar associations may consider sellers of living trusts to be violating state Unauthorized Practice of Law statutes and state consumer protection laws. A new Consumer Alert, prepared for issuance with the testimony, warns about living trust scams and encourages consumers who believe they may have fallen for a scam to come forward and report their experience to the FTC or other authorities.

ENFORCEMENT INITIATIVES AGAINST FRAUD

The Commission's extensive law enforcement experience with fraud indicates that the elderly constitute a disproportionate number of consumer fraud victims; in some scams, 80 percent or more of the victims are 65 or older. The elderly often are the deliberate targets of fraudulent operators who take advantage of the fact that many older people have cash reserves or other assets to spend on seemingly attractive offers.

Survey research conducted in 1998 by the National Consumers League's National Fraud Information Center ("NFIC") -- in cooperation with AARP -- provides a breakdown of the types of fraud which appear to be directed in particular to older consumers. In particular, NFIC found that while consumers aged 50 and older accounted for about 38 percent of the telemarketing fraud reported overall in 1997, the percentages were even higher in certain categories: magazine sales fraud [40%]; travel offers fraud [46%]; lotteries fraud [53%]; and credit card loss protection plans fraud [71%].[10]

More recently, at the request of the FTC's Northeast Region, NFIC reviewed its year 2000 data, and indicated that it received a total of 1100 complaints from consumers aged 60 and older in 2000, and that the five largest categories of their complaints concerned Internet auctions [239]; prizes/sweepstakes [200]; magazines [182]; credit card loss protection [87]; and credit card issuing [46].

From January 1999 through August 2001, Commission enforcement activities have addressed traditional frauds -- including telemarketing fraud, prize promotion and sweepstakes fraud, advance fee loan scams, credit card loss protection fraud, and lottery scams and other cross-border frauds -- as well as those that are more contemporary, including Internet fraud and identity theft. The Commission is able to bring many of these schemes to a halt quickly, and often to obtain restitution for the defrauded consumers.

The following discussion describes Consumer Sentinel and econsumer.gov -- two crucially important mechanisms for identifying fraudulent or otherwise deceptive schemes so that they can be targeted as quickly as possible - - and Commission law enforcement initiatives against a number of the most common types of fraud.

Consumer Sentinel

A cornerstone of the FTC's ability to act quickly and effectively against fraud is access to up-to-date consumer complaint information. In late 1997, the FTC established Consumer Sentinel as a web-based law enforcement network.[11] The network provides law enforcement agencies in the United States, Canada and Australia with secure, password-protected access to more than 300,000 consumer complaints about telemarketing, direct mail and Internet fraud. Law enforcement agencies and private organizations contribute consumer complaints to the Consumer Sentinel database, which is searchable by criteria including the name, address and telephone number of a firm; the type of fraud; and the country and state or province of the consumer. The National Association of Attorneys General, the National Consumers League, Better Business Bureaus, the U.S. Postal Inspection Service, and Canada's Phonebusters are leading partners with the FTC in this project. One part of Consumer Sentinel, accessible *only* to law enforcement officials, provides – free – consumer complaint data and other intelligence about particular firms or individuals.[12] More than 320 United States, Canadian, and Australian law enforcement agencies have signed up for access,[13] which enables them to share information, avoid duplication of efforts and formulate rapid responses to new fraud schemes.[14] In addition to the site available only to law enforcers, Consumer Sentinel also has a website for the public;[15] consumers can file complaints electronically at *www.ftc.gov*, and thus channel information about potential scams directly to the FTC's Consumer Response Center ("CRC") and the fraud database. In addition, CRC counselors, who process both telephone and mail inquiries and complaints, enter complaints in Consumer Sentinel.[16]

Since Consumer Sentinel went online, the Commission has upgraded the capacity of the database and enhanced the agency's complaint-handling systems by creating and staffing a new toll-free consumer helpline at 1-877-FTC-HELP, and by adding several new functions to Consumer Sentinel. The "Top Violators" report function allows a law enforcement officer to pull up the most common suspects and schemes by state, region or subject area. The "Auto Query" function permits an investigator to create an automatic search request, which can be set to run daily, weekly, or monthly. If new complaints come into Consumer Sentinel that match the search criteria, Consumer Sentinel automatically alerts the investigator via email. The "Alert" function allows law enforcers to communicate with each other and minimize duplication of their efforts. Yet another new function enables searches of Commission court orders online. In 2000, Consumer Sentinel received more than 100,000 consumer complaints, and the database now holds more than 300,000 consumer complaints.

Consumer Sentinel receives data from other public and private consumer organizations, including 64 local offices of the Better Business Bureaus across the nation, the National Consumers League's National Fraud Information Center, and Project Phonebusters in Canada. Additionally, a U.S. Postal Inspector has served as the program manager, and the U.S. Postal Inspection Service just signed an agreement to share consumer complaint data from its central fraud database with Consumer Sentinel. Finally, the FTC recently signed an agreement with the

Department of Defense to collect consumer complaints from men and women serving in the military through a project called "Soldier Sentinel."[17]

econsumer.gov

Building on Consumer Sentinel, and as an important part of its effort to protect seniors and other consumers, the FTC works closely with foreign governments. One example is a pilot project called *econsumer.gov*, a joint effort of the Commission, agencies from 12 other countries and the Organization for Economic Cooperation and Development ("OECD") to gather and share cross-border e-commerce complaints.[18] This project will allow law enforcers from around the world to access a database of consumer complaints specifically about cross-border Internet transactions. It has two parts: a public Web site at www.econsumer.gov, and a restricted access law enforcement site.

Consumers worldwide can visit the public Web site and use one of four languages (English, French, German, and Spanish) to enter e-commerce complaints about foreign companies;[19] to secure important consumer information on topics such as shopping safely online; and to secure contact information for consumer protection agencies in the participating countries. Moreover, links to the site provided by other organizations substantially enhance its accessibility to consumers. Thus, for example, AARP provides a direct link from the Web Resources section of its Web site to econsumer.gov, noting that it provides consumers with "tips for shopping online, advice on Internet auctions, links to many international consumer protection agencies, and more."

Law enforcement agencies from participating countries will have access to the complaints through the restricted access, password-protected law enforcement Web site. This site also will allow government officials to communicate with consumer protection law enforcers from other countries, to notify each other of ongoing investigations, and to receive information about recent actions.

Telemarketing Fraud Cases

In conjunction with Section 5 of the FTC Act, the Telemarketing and Consumer Fraud and Abuse Prevention Act[20] gives the FTC specific additional powers to combat telemarketing fraud. As prescribed by the Act, in 1995 the Commission promulgated the Telemarketing Sales Rule ("TSR"),[21] implementing the requirements of the Act; imposing a number of general requirements upon all telemarketers; and prohibiting specific fraudulent or potentially fraudulent practices. From January 1996 through September 4, 2001, the Commission (or the U.S. Department of Justice, acting on its behalf) filed 124 law enforcement actions alleging Rule violations, including 66 filed during the January 1999-September 4, 2001 period. Approximately 75 percent of the 124 cases have been concluded, producing injunctions against misrepresentations and future violations of the Rule; outright bans on some or all forms of telemarketing in some cases; monetary judgments totaling approximately $155 million for consumer redress;[22] and civil penalties totaling approximately $777,000. Through these efforts, the Commission has stopped major fraudulent telemarketing and related operations that have bilked consumers out of hundreds of millions of dollars.

Moreover, the Commission conducted extensive law enforcement "sweeps" with State Attorneys General, State securities officials, the FBI, the United States Postal Service, and other agencies, and has developed alliances with new law enforcement authorities to coordinate additional actions against fraudulent actors. An important component of these cooperative efforts is the ability to pursue both civil and criminal law enforcement actions against particularly egregious telemarketing scams. Under this approach, once the FTC concludes its civil case against a group of telemarketers engaged in particularly egregious practices, it refers the matter to state and federal prosecutors, who may determine whether to file criminal charges against the defendants as well.

Prize Promotion and Sweepstakes Fraud Cases

Older Americans often are the targets of fraudulent prize promotions and sweepstakes, egregious types of fraud usually conducted through telemarketing or direct mail. In 1999, approximately 24 percent of the complaints logged into Consumer Sentinel pertained to prize promotions, sweepstakes, and gifts. In a typical scheme, telemarketers make unsolicited calls or mail notification cards to consumers stating that they have won a valuable prize, such as a vacation, car, cash or jewelry. Consumers are told that before they can redeem their prize, they must purchase certain products and submit payment for nonexistent shipping, taxes, customs, or bonding fees. Some schemes never provide consumers with any prize or gift; others provide inexpensive items, often called "gimme gifts" or "cheap gifts." These schemes clearly violate the TSR, which requires telemarketers, in any prize promotion, to disclose that no purchase or payment is required to win a prize, and to provide information about the odds of winning the prize and how to participate in the promotion at no cost.[23]

Prize promotion fraud continues to be a significant problem for seniors and other consumers, and remains one of the top five categories of complaints reported in Consumer Sentinel.[24] The Commission continues to address this type of fraud through efforts such as Project Prize Fighter, a Commission sweep targeting bogus prize promoters which was publicly announced on July 13, 2000. The sweep produced 24 law enforcement actions against more than 40 defendants in 9 states.[25] In one of the cases, *FTC v. Cory Banks, Civ. Action No. CV-0011218-CM (RZx)*(C.D. Cal. Announced July 13, 2000), the Commission filed a complaint alleging that the defendants contacted and represented to consumers that the defendants were holding prize winnings for them; and advised the consumers that to secure the winnings, they would have to pay a fee for research, reporting, confirmation and document delivery. The Commission also alleged that the defendants failed to provide anything to consumers who sent in their money; and refused to make refunds to the victims. The Commission secured a temporary restraining order, preliminary injunction, and asset freeze against the corporate and individual defendants, and is seeking consumer redress.

More recently, on January 5, 2001, the FTC announced Project Mailbox IV, a nationwide coordinated law enforcement effort and consumer education initiative targeting deceptive mail offers, unsolicited faxes and e-mail "spam." This initiative produced a total of more than 300 law enforcement actions during the October 1999 - September 2000 period. During that period, offers using deceptive sweepstakes and prize promotions led the list of the Project's law enforcement actions. The FTC and its partners in this project -- 49 State Attorneys General, the Postal Inspection Service and the SEC -- thus far have filed a total of more than 180 lawsuits against these types of scams. As a result, millions of dollars have been returned to consumers, many of them elderly, who had been taken in by such offers. Since the Commission and its law enforcement partners began their annual Project Mailbox efforts in October 1997, the Project has thus far resulted in a total of approximately 500 law enforcement actions.

Advance Fee Loan Cases

In advance-fee loan cases, telemarketers seek out people with bad credit and offer them loans or credit cards in exchange for fees paid up-front. Most advance-fee loan telemarketers persuade consumers to pay the up-front fee by telling them that they are certain or nearly certain to receive loans. Fees range from $25 to several hundred dollars. Telemarketers often assure consumers that they will receive a refund in the unlikely event that a loan is not forthcoming. After paying the fee, however, those who are offered loans typically never receive them, and those who are offered credit cards usually receive only a standard application form or generic information on how to apply for credit cards. Consumers often have difficulty contacting the telemarketers for a refund. The Telemarketing Sales Rule prohibits these practices.[26]

From January 1999 to August 2001, the Commission initiated and conducted two phases of "Operation Advance Fee Loan," a law enforcement program targeting corporations and individuals that promise loans and credit cards for an advance fee but never deliver them.[27] On August 12, 1999, the Commission announced that it had filed four U.S. District Court complaints addressing alleged advance fee loan scams. For example, in *FTC v. American Consumer Membership Services, Inc., and Darryl Smith*, (N.D.N.Y. 1999), the complaint alleged that the defendants fraudulently telemarketed advance fee credit cards to low income consumers and those with credit problems, but provided consumers who paid a $69 fee nothing more than credit card applications with lists of banks to which they could apply for secured or unsecured credit cards.[28] In this case, the Commission filed a motion for a preliminary injunction; in the other cases discussed in note 28, the District Courts involved issued temporary restraining orders to halt the deceptive practices at issue and freeze the defendants' assets, pending trial.

On June 20, 2000, the Commission announced the second phase of Operation Advance Fee Loan, which included five cases filed by the Commission, 13 actions taken by State Attorneys General and/or other State officials, and three criminal cases filed by Canadian law enforcement authorities against Canadian advance fee loan scam operators who preyed on Canadian and American citizens. For example, in *FTC v. Financial Services of North America*, the complaint alleged that the defendants misrepresented that consumers who paid a fee of $69 to $99 in advance would receive a guaranteed credit card -- and that the consumers' bank accounts would not be debited, or would be debited only for authorized amounts -- but provided consumers who paid the fee nothing more than discount purchasing club memberships and credit card applications.[29]

Credit Card Loss Protection Fraud Cases

Unscrupulous telemarketers pitching worthless credit card "protection" packages often prey on unwary consumers, including many older consumers, who fear that their credit cards are at risk. In fact, the TILA and Regulation Z provide that consumers cannot be held liable for more than $50 for any unauthorized charges submitted to a credit card account.[30] To address these types of misrepresentations, on October 30, 2000, the Commission filed complaints against six groups of companies and their principals as part of a nationwide enforcement sweep called "Operation Protection Deception."[31] For example, in *FTC v. Consumer Repair Services, Civ. Action No. 00-11218 CM (RZx)*(C.D. Cal. Announced Oct. 30, 2000), the Commission complaint alleged that the defendants used boiler rooms nationwide, or in Canada, to sell consumers credit card protection packages that in fact, provided no protection at all; misrepresented to consumers that they could be liable for hundreds, if not thousands, of dollars in unauthorized charges; and misrepresented that thieves could secure consumers' credit card numbers over the Internet and use these numbers to rack up unauthorized charges. The complaint further alleged that the defendants billed consumers between $259 and $400 for the "service" when they accepted the offer; charged those consumers who declined the offers; and refused to grant refunds to consumers who attempted to cancel the "protection." In this case and in the cases against five other sets of defendants in Operation Protection Deception, the Commission secured temporary restraining orders with asset freezes against each defendant, their associated businesses and their principals, and the appointment of temporary receivers; and sought consumer redress, including the refund of all illegally billed charges.

More recently, following an investigation coordinated with the British Columbia Ministry of Attorney General, the Federal Bureau of Investigation ("FBI") and the Royal Canadian Mounted Police ("RCMP"), the Commission filed a Section 13(b) complaint in *FTC v. OPCO International Agencies, Inc., Civ. Action No. CO1-2053R* (W.D. Wash. Announced Feb. 7, 2001), alleging that the defendants fraudulently marketed credit card loss protection and debt consolidation services, primarily to seniors, in violation of the FTC Act and the TSR. The complaint alleges that when marketing credit card loss protection services, the defendants misrepresented their identity to imply an affiliation with a consumer's credit card issuers; used scare tactics to market their programs -- such as telling consumers that their credit card numbers were accessible to criminals via the Internet, and that unless they purchased "protection" services, they could be held liable for unauthorized charges -- and typically charged $299 for their "protection" services. When marketing debt consolidation services, the defendants allegedly told consumers that for $397, they would obtain a low-interest loan that could be used to consolidate their credit card debt; instead, however, consumers received only a list of banks offering low-interest credit card loans. The complaint further alleged that, in addition to telemarketing directly through their own call centers, the defendants provided products, scripts, customer service and credit card processing services to others engaged in deceptive telemarketing. Finally, the complaint alleged that the defendants often posted charges on consumers' credit cards without their authorization; misrepresented their refund policy; and failed to promptly, clearly and conspicuously state, as required by the TSR, that the purpose of their call was to sell goods or services. The District Court granted the FTC request for preliminary relief by issuing an *ex parte* temporary restraining order and asset freeze against the defendants. The Commission is further seeking a permanent injunction and other equitable relief, as the court deems warranted.[32]

Lottery Scams and Other Cross-Border Fraud Cases

In the mid 1990s, senior citizens in the United States began receiving increasing numbers of solicitations from fraudulent telemarketers operating from Canada. Telemarketing fraud perpetrated against U.S. consumers by Canadian telemarketers has become a serious problem. In 2000, 71 percent of the cross-border complaints collected in Consumer Sentinel -- more than 8,300 -- were registered by U.S. consumers against Canadian companies.[33] Such U.S. consumer complaints accounted for reported dollar losses of $5.3 million in 1999, $19.5 million in 2000, and a projected $36.5 million in 2001, based on the number of complaints received thus far in 2001.[34]

The highest number of complaints from U.S. consumers against Canadian companies concern sweepstakes, advance-fee loans, lotteries, and Internet auctions. Sweepstakes and related prize promotion complaints accounted for 51 percent of the complaints; advance-fee loan complaints accounted for about 24 percent and lotteries accounted for about 6 percent. Moreover, 61 percent of the dollar loss U.S. consumers reported from sweepstakes, advance-fee loans, and lotteries overall involved Canadian companies. While Internet auctions also accounted for about 6 percent of these complaints, they accounted for only about 1 percent of the dollar loss. Of course, cross-border fraud is not a one-way problem: About 12 percent of the cross-border complaints added to Consumer Sentinel in 2000 were registered by Canadian consumers against U.S. companies; leading complaint categories included travel, Internet auction scams, and sweepstakes. In the past 10 years, FTC legal actions have resulted in the return of more than $730,000 in redress to more than 2,700 Canadian consumers.

The Commission has developed and implemented a number of strategies to combat cross-border fraud. The FTC Act gives the agency jurisdiction over cross-border consumer transactions; in particular, Section 5(a) of the FTC Act gives the Commission authority to prohibit unfair or deceptive acts or practices "in or affecting commerce,"[35] and Section 4 of the FTC Act defines "commerce" to include that "among the several States or with foreign nations."[36] Commission jurisdiction under the FTC Act extends to the TSR, which the Commission can enforce "in the same manner, by the same means, and with the same jurisdiction, powers, and duties" it has under the FTC Act.[37] As a result, in a number of instances, the Commission has enforced the TSR against Canadian telemarketers calling consumers in the U.S.[38]

In the typical cross-border lottery scheme, telemarketers offer consumers the opportunity to "invest" in tickets in well-known foreign lotteries -- such as those in Canada and Australia -- without disclosing that buying and selling foreign lottery tickets is illegal in the U.S. Consumer Sentinel statistics indicate that 62 percent of U.S. consumer complaints about lottery scams are against Canadian companies, which reportedly caused more than $1.2 million in losses. In response, the Commission and Canadian authorities have initiated a number of law enforcement actions against cross-border lottery con artists that target elderly U.S. consumers. In November 1998, for example, the Commission and the Attorneys General of Arizona and Washington filed a civil complaint in *Win USA Services Ltd., Civ. Action No. C98-1614Z* (W.D. Wash. Nov. 1998), alleging that the Canadian telemarketers convinced consumers to send them hundreds or thousands of dollars by promising them that they were likely to win, were "guaranteed" to win, or had already won a foreign lottery. The complaint sought a permanent injunction prohibiting the defendants' lottery telemarketing activities, and restitution to consumers or disgorgement of ill-gotten gains and civil penalties, where appropriate. The investigation was conducted in cooperation with the Royal Canadian Mounted Police and the British Columbia Ministry of Attorney General, which filed suit against the same defendants in a British Columbia court. That court later imposed an asset freeze and appointed a receiver, pending trial. In April 2001, the U.S. District Court issued a summary judgment order that, *inter alia*, prohibits the defendants from selling tickets, chances, interests or registrations in any lottery to U.S. residents, and from selling any product or service to U.S. residents in a way that violates the FTC Act, the Telemarketing Sales Rule, or the Arizona and Washington consumer protection statutes. Under a stipulated final judgment and order filed on February 5, 2001, the defendants will pay $500,000.

In a related development, Alvin Cordeiro, doing business as Quick-Checks, agreed to settle FTC charges that he violated the FTC Act and the TSR by providing "substantial assistance and support" to the Canadian telemarketers, including the *WinUSA* defendants. In *FTC v. Alvin Cordeiro, Civ. Action No. C01-20109-EAI* (N.D. Cal. filed Feb. 7, 2001), the FTC alleged that Cordeiro provided account debiting services to process demand drafts through U.S. banks, and that he knew, or consciously avoided knowing, that the telemarketing scheme was fraudulent and violated federal law. The TSR prohibits a person from providing substantial assistance to a telemarketer when the person “knows or consciously avoids knowing” that the telemarketer is violating certain provisions of the TSR.[39] According to the FTC complaint, drafts representing more than 37 percent of the total dollar volume of Win USA sales presented to Quick-Checks for processing were rejected on submission to consumers' banks; moreover, of the amounts successfully debited from consumers' accounts, drafts representing another 30 percent were later returned or reversed at consumers' request. The complaint alleged that these high rejection and return rates “should have signaled to Cordeiro that there were fundamental problems with the Win USA telemarketing efforts."

Under the terms of the consent decree, Cordeiro is prohibited from providing substantial assistance or support -- including but not limited to customer payment processing services -- to anyone who offers or promotes foreign lottery sales to U.S. citizens. The decree also prohibits Cordeiro from assisting any telemarketer who violates the FTC Act or the TSR, including those who make false statements; fail to disclose material restrictions or conditions to receive goods or services; or fail to obtain customers' express verifiable authorization of payment.

Two additional Commission complaints filed in U.S. courts also challenged Canadian-based telemarketing companies selling foreign lottery tickets to U.S. residents. In *FTC v. Windermere Big Win International Inc.*, No. 98C 8066 (N.D. Ill. Sep. 7, 1999), the FTC’s case was joined with a parallel case filed in Canadian courts by the Department of Justice’s Office of Foreign Litigation, which sought and obtained an injunction freezing the defendants’ assets in Canada (issued by an Ontario Provincial Court in December 1998). In October 2000, the U.S. District Court entered a redress judgment for $19.7 million, and Canadian litigation is pending for recovery of any available redress funds.

The FTC filed a second action in U.S. District Court against another Toronto-based lottery scam in *FTC v. Growth Plus International Marketing, Inc., et al., Civ. Action No. 00C7886* (N.D. Ill. Filed Dec. 18, 2000). The complaint alleges that the defendant telemarketers targeted elderly consumers, inducing them to buy shares in a Canadian lottery ticket or series of tickets at prices ranging from $39 to almost $600, by telling them that their chances of winning the lottery were very good, and by relating stories of U.S. consumers who purportedly played through their firm and won. The complaint also alleges that the defendants told consumers they were sponsored by, affiliated with or registered with the Canadian government to sell the lottery tickets. The complaint alleges that the defendants falsely represented that it is legal to buy and sell foreign lottery tickets in the U.S., a violation of the FTC Act and the Telemarketing Sales Rule, and failed to disclose -- prior to collecting money from consumers -- the material fact that the sale of and trafficking in foreign lotteries is a crime in the U.S., also a violation of the TSR. The Commission has asked the court for a permanent injunction against the illegal activity and for restitution for consumers.

In 1999, investigators for the Royal Canadian Mounted Police Project Emptor effort learned of a new lottery scheme, in which consumers were purportedly sold government savings bonds issued by the National Savings Bank of England. Bond holders were supposedly entered in a monthly lottery in which all the bond interest is awarded to a few bond holders. While such bonds do exist, telemarketers in Canada are not authorized to sell them and, because the bonds have a lottery feature, it is illegal to sell them in the United States. As a part of Project Emptor, the Commission filed U.S. District Court complaints in *FTC v. B.B.M. Inv., Inc.,* No. C00-0062 (W.D. Wash. filed Jan. 13, 2000), and *FTC v. Canada Prepaid Legal Serv., Inc.,* No. 00-CV-02080 (W.D. Wash. filed Dec. 11, 2000).[40] Subsequently, in *FTC v. NAGG Secured Investments, Civ. Action No. CV00-2080Z* (W.D. Wash. Filed Dec. 11, 2000) the Commission filed a U.S. District Court complaint alleging that the defendant telemarketers, operating under a variety of names, called consumers and guaranteed substantial monthly payments between $5,000 and $12,000 in return for a one-time payment of up to $5,000. Alternately, the telemarketers called claiming to be marketing bonds -- in some cases British Premium Savings Bonds -- the purchase of which would purportedly qualify consumers for cash prizes, monthly cash payments or bond investments with the chance to participate in monthly drawings for cash prizes. Consumers then received mailings that included a purported British National Premium Savings Bond certificate and other documents indicating that their names or bond numbers would be entered into the Premium Savings Bond program's monthly drawings for cash winnings. In fact, the consumers who paid the defendants received nothing of value. The FTC also charged that some of the defendants placed unauthorized charges on consumers' credit cards and in some instances, simply charged consumers' credit card accounts without ever having contacted them.

Internet Fraud Cases

The growth of the Internet and ecommerce has been explosive; the number of American adults with Internet access increased from approximately 88 million in mid-2000 to more than 104 million by the end of the year.[41] Increases of that magnitude have led to corresponding increases in ecommerce. The Census Bureau of the Department of Commerce estimated that in the fourth quarter of 2000 -- without adjusting for seasonal, holiday and trading-day differences -- online retail sales totaled $8.686 billion, an increase of 67.1 percent from the fourth quarter of 1999.[42] For all of 2000, ecommerce sales were an estimated $25.8 billion, some 0.8 percent of all sales.[43]

An estimated 40 percent of Americans over the age of 50 own personal computers; of these, 72 percent can access the Internet.[44] Senior citizens communicate with children and grandchildren through email, peruse websites for news and entertainment, and use the Internet to research travel, investment and business opportunities.

Not surprisingly, the boom in ecommerce also has produced an increase in online fraud and deception. While the Commission received fewer than 1,000 Internet fraud complaints in 1997, it received more than 8,000 in 1998, and more than 25,000 in 2000. Indeed, in 2000, roughly 26 percent of all fraud complaints that various organizations added to Consumer Sentinel related to online fraud and deception.[45] Since 1994, the Commission has filed 182 Internet-related lawsuits against more than 593 defendants. Through these lawsuits, the Commission secured orders enjoining further operation of the illegal schemes at issue, requiring the payment of more than $180 million in redress or disgorgement,[46] and freezing assets worth millions of dollars in cases that still are in litigation. The Commission's U.S. District Court actions alone have prevented further consumer injury from Internet schemes with estimated annual sales of more than $250 million.[47]

The Commission and other law enforcement agencies face a host of novel challenges in their efforts to combat fraud and deception online. Traditional scams -- such as pyramid schemes and false product claims -- can thrive on the Internet; in addition, the Internet enables con artists to cloak themselves in anonymity. Law enforcement authorities must act much more quickly to stop newly-emerging deceptive schemes before the perpetrators disappear without a trace. And because the Internet transcends national boundaries, law enforcement authorities must be more creative and collaborative to successfully combat online fraud.

Operation Top 10 Dot Cons is one of the Commission's most recent examples of extensive and creative law enforcement to protect seniors and other consumers from Internet fraud. The initiative, publicly announced on October 31, 2000, was a broad "sweep" of fraudulent and deceptive Internet scams, carried out in a year-long law enforcement effort. Altogether, the FTC and four other U.S. federal agencies,[48] and consumer protection organizations from nine countries[49] and 23 states[50] initiated and announced 251 law enforcement actions against online scammers. The FTC filed 54 of the cases.

The top 10 Internet or online scams, identified through an analysis of complaint data in the Consumer Sentinel database, were:

? Internet Auction Fraud
? Internet Service Provider Scams
? Internet Web Site Design/Promotions ("Web Cramming")
? Internet Information and Adult Services (unauthorized credit card charges)
? Pyramid Scams
? Business Opportunities and Work-At-Home Scams
? Investment Schemes and Get-Rich-Quick Scams
? Travel/Vacation Fraud
? Telephone/Pay-Per-Call Solicitation Frauds (including modem dialers and

videotext)[51]
- ? Health Care Frauds

Using complaint data from its Consumer Sentinel network (described on pages 13-14), the FTC and the other law enforcement agency participants to identify not only the top 10 types of online scams, but also the specific companies generating the largest numbers of complaints about each of those types of scams. These companies became the targets of investigations, and ultimately, the defendants. Consumer Sentinel data enabled the Commission and its partners to obtain and develop evidence against these targets from individual consumers whose complaints had been included in the database.

Four of the FTC complaints filed in U.S. District Court charged the defendants with operating Internet auction scams; that is, the defendants allegedly advertised computer software and electronic consumer goods at various online auction sites and took cashier's checks or money orders in payment, but never delivered the goods. In three of those cases, the FTC secured orders freezing the defendants' assets for consumer redress purposes; in all four, the FTC sought permanent injunctions against violations of the FTC Act and the Mail Or Telephone Order Merchandise Rule.

In a fifth FTC case, the U.S. District Court complaint alleged that the defendants mailed $3.50 "rebate" checks to consumers. When consumers cashed the checks, they unwittingly agreed to allow the defendants to serve as their Internet Service Provider. The complaint alleged that the defendants then placed monthly charges on the victims' telephone bills, and made it nearly impossible for the victims to cancel future monthly charges and get refunds. The Commission secured a stipulated permanent injunction in this case prohibiting the billing behavior in the future, and initiated an effort to determine the amount of consumer redress that the defendants should be required to pay.

Five other U.S. District Court complaints filed by the FTC addressed "web cramming." In that practice, firms bill consumers for website pages they don't know they have. Typically, the scammers targeted small businesses and not-for-profit organizations, called them and offered "free" web pages, and then billed the victims, on their telephone bills, without authorization. Settlements with five of the defendants produced consent decrees prohibiting web cramming and related practices; a settlement with a sixth defendant also requires the payment of more than $3 million in consumer redress.

The FTC also announced the filing of a U.S. District Court complaint targeting a work-at-home medical billing scam that allegedly made deceptive earnings claims on the Internet and in print ads to promote its $369 package of "training, software and clients." The agency asked the court to stop the deceptive practices, appoint a receiver and freeze the defendants' assets, pending trial. In two other cases, the Commission filed lawsuits against Web site operators who deceptively promised quick riches with few risks to consumers who agreed to sign up for their day trading programs and products. The companies agreed to settle; the consent decrees require the defendants to have substantiation for any future earnings claims; bar future misrepresentations about day trading risks; require conspicuous disclosure of the high-risk nature of day trading; and prohibit the deceptive use of testimonials.

Online Pyramid Fraud Cases

Pyramid schemes are the most notable example of a fraud whose size and scope are magnified by the Internet.[52] By definition, these schemes require a steady supply of new recruits, including seniors, who almost inevitably become victims. Unfortunately, the Internet provides an efficient way to reach countless new prospects around the world and to direct funds more efficiently and quickly from the victims to the scammers at the top of the pyramid. As a result, the victims are more numerous and the fraud operator's financial "take" is much bigger.

The Commission maintains a strong enforcement presence, obtaining orders for more than $70 million in redress for victims,[53] and pursuing millions more in ongoing litigation. In *FTC v. Five Star Auto Club, Inc.,*[54] the Commission prevailed at trial against a pyramid scheme that persuaded online consumers to buy in by claiming that an annual fee and $100 monthly payments would give investors the opportunity to lease their "dream vehicle" for "free" while earning up to $80,000 a month by recruiting others to join the scheme. The court issued a permanent injunction shutting down the scheme, barring for life the scheme's principals from any multi-level marketing business, and ordering them to pay $2.9 million in consumer redress. Similarly, in *FTC v. Equinox International Corp.,* No CV-S-990969-JBR-RLH (D.Nev. 1999), the complaint addressed a pyramid scheme promoted through many devices, including some use of the Internet, and the Commission ultimately secured a federal court order requiring, *inter alia*, the payment of at least $40 million in consumer redress.

Identity Theft Cases

Under the Identity Theft Assumption and Deterrence Act of 1998, the FTC is charged, with responsibility to create and maintain a central clearinghouse for identity theft complaints.[55] Consumer Sentinel serves as the requisite clearinghouse, and victims of identity theft can call the FTC's toll-free telephone number, 1-877-ID THEFT (438-4338), to report the crime and get advice on how to proceed. Counselors enter the victims' information about their experience into the Identity Theft Data Clearinghouse, which immediately makes the information available, through the Consumer Sentinel web site, to 174 participating domestic law enforcement agencies. The Clearinghouse data is used to identify patterns of illegal activity, and to facilitate identification of organized or large-scale identity theft rings. The Clearinghouse has begun to enable the many agencies involved in combating identity theft to share data, and to work more effectively to track down identity thieves and assist consumers.[56] To further facilitate the investigation and prosecution of identity theft, the U.S. Secret Service has detailed an agent to the Commission's Identity Theft Clearinghouse program who helps develop and refer case leads from the Clearinghouse to law enforcers throughout the nation.

In *FTC v. Jeremy Martinez d/b/a Info World,*[57] the Commission alleged that the defendant facilitated identity theft by using the Internet to offer fake ID templates for which there was no legitimate use. In particular, the FTC complaint alleged that Jeremy Martinez, doing business as Info World, maintained Web sites, including one located at a site called "newid" that: sold 45 days of access to fake ID templates for $29.99; contained "high quality" templates to use in creating fake drivers licenses from 10 states;[58] and offered a birth certificate template, programs to generate bar codes (required in some states to authenticate drivers licenses) and a program to falsify Social Security numbers. The complaint alleged that selling the fake ID templates violated

Section 5 of the FTC Act; and that by providing false identification templates to others, Martinez provided the "means and instrumentalities" for others to break the law, a separate violation of Section 5. The Commission secured a temporary restraining order halting the alleged illegal activity; and soon thereafter, a stipulated preliminary injunction continuing the relief granted in the TRO. On May 17, 2001 the Court approved Martinez' stipulated settlement with the FTC ; the consent decree, *inter alia*, permanently bans Martinez from selling false identification documents or identification templates, or assisting others doing so, and from providing others with the means and instrumentalities with which to make any false or misleading representations that conceal or alter a person's identity, or that falsely signify that a fake document is real. In addition, the consent decree requires Martinez to disgorge illegal earnings from the scheme in the amount of $20,000, and through an "avalanche" clause, makes him liable for more than $105,000 in the event that he misrepresented his financial condition to the Commission.

Training

As another part of its ongoing Internet fraud law enforcement initiative, the FTC has trained more than 700 law enforcement and consumer protection officials from 20 different countries – including 17 federal agencies, 25 state governments and 14 Canadian consumer protection offices -- in online investigation and law enforcement techniques in locations ranging from Anchorage, Alaska to Paris, France. These efforts include proactive programs to uncover fraud and deception in broad sectors of the online marketplace through "Surf Days," by using new technologies to "surf" (that is, to search) the Internet to detect and analyze emerging Internet problems. While Consumer Sentinel provides data on broad trends and the volume of complaints prompted by particular Internet schemes, Surf Days allow the Commission to take a "snapshot" of a market segment at any given time. Surf Days also are an important vehicle for business education; they enable the Commission to identify and reach new entrepreneurs, and alert those who may be violating the law unknowingly to modify their practices. To date, the Commission has conducted 27 different Surf Days targeting problems ranging from "cure-all" health claims to fraudulent business opportunities and credit repair scams.[59] More than 250 law enforcement agencies or consumer organizations around the world have joined the Commission in these efforts; collectively, they have identified more than 6,000 Internet sites making dubious claims. The law enforcement Surf Day strategy has proven so effective that it is now widely used by other government agencies, consumer groups and other private organizations.

CONSUMER AND BUSINESS EDUCATION INITIATIVES

Meaningful consumer protection depends on education as well as law enforcement. Consumers must be given the tools to identify potentially fraudulent or otherwise deceptive practices, and businesses must be advised about how to comply with the law.

To achieve these important education objectives, the Consumer and Business Education Program plans, develops and implements creative practical, plain English mission-related campaigns aimed at both broad and segmented consumer and industry audiences. These efforts encourage informed consumer choice and competitive business practices in the marketplace, and constitute a cost-effective way to help minimize consumer injury and obtain compliance with the law. To leverage expertise and limited resources, the program partners with businesses, trade associations, consumer groups and other government agencies when appropriate, exhibits at national conferences and conventions, and produces public service announcements for radio, print and the Internet. A consumer and/or business education component is included in each major Consumer Protection law enforcement initiative; some specific efforts are discussed below.

Mission Promotion

In an effort to help consumers recognize and avoid fraud and deception, give them a place to report fraudulent and deceptive practices, and build the Consumer Sentinel database, the Program works with public and private sector organizations, like the Administration on Aging, the Social Security Administration, the U.S. Postal Inspection Service, and the AARP to promote and market its information, toll-free telephone number and online complaint form.

Publications

Every year, the Program produces publications to alert consumers to their rights and businesses to their responsibilities. These publications are disseminated through a network of thousands of intermediaries who order bulk copies for their own constituents. The Program also logs millions of accesses to the consumer and business education on the FTC website. In addition to brochures and "news you can use" alerts, the Program produces feature stories that are released to thousands of broadcast, print and online media, and hosts abbreviated audio versions of its print publications on the Commission's website. The number of Commission publications viewed online increased from 140,000 in 1996 to 2.5 million in 1999 to over 9 million in 2001. This dramatic increase highlights the importance of the Internet to any large-scale information dissemination effort.

In addition to placing publications on its own Web site, the FTC actively encourages partners -- government agencies, associations, organizations, media outlets, and web communities and corporations with an interest in a particular subject -- to link to its information from their sites and to place banner public service announcements provided by the FTC on their sites. Links from the banners allow visitors to click through to the FTC site quickly to get the information they're looking for exactly when they want it. Among the organizations that have helped consumers find information on *www.ftc.gov* are Yahoo!, AOL, American Express, Circuit City, AARP, the North American Securities Administrators Association, the Alliance for Investor Education, the Better Business Bureau, CBS, motleyfool.com, the U.S. Patent and Trademark Office, Shape Up

America!, the National Institutes of Health, CNN.com, MSNBC.com and the Arthritis Foundation.

Special Initiatives

Telemarketing Fraud The FTC's Consumer Education program has an ongoing initiative to alert consumers about the perils of telemarketing fraud. The FTC's Partnership for Consumer Education is a cooperative effort among corporations, trade groups, consumer organizations and federal agencies to help provide effective information about telemarketing fraud. With the assistance of its partners, the Commission has arranged for messages about fraud to appear in such diverse locations as websites, sales catalogs, billing statements, classified advertising, and public transit systems. Our consumer information, which is available in print and online[60] (in writing and in audio), advises consumers never to buy anything over the phone, especially if they haven't initiated the call, not to divulge their credit card numbers or checking account numbers, and to be on the alert for high-pressure sales tactics. Brochures deal with prize promotions, advance fee loans, credit repair, travel offers, credit card loss protection offers, international lotteries, and magazine sales, and the "top 10 dot cons," among other subjects.

Identity Theft Commission efforts with respect to identity theft, a subject of concern to older people, provide an example of the multi-pronged approach we take to issues affecting consumers. In addition to law enforcement, the Commission is conducting an extensive multi-media education campaign to raise awareness of identity theft, including distributing print materials through hundreds of "partners," media mailings and interviews, and a website (www.consumer.gov/idtheft.). The FTC literally wrote the book on ID Theft – *Identity Theft: When Bad Things Happen to Your Good Name.* It covers how identity theft occurs; how to protect personal information and minimize risk; what to do if you're a victim; how to correct credit-related and other problems that may result from identity theft; and federal and state resources available to victims of identity theft. Through April 2001, the Commission had distributed directly more than 230,000 copies of the booklet; another 425,000 copies have been printed and are being distributed by the Social Security Administration. The Commission also has made the booklet available on CD for organizations to reprint on their own. To date, more than 700 CDs have been distributed to private sector companies and many local law enforcement agencies.

The identity theft website includes the booklet, descriptions of common identity theft scams, and links to testimony, reports, press releases, identity theft-related state laws, and other resources. The site also links to a complaint form, allowing consumers to send complaints directly to the Identity Theft Data Clearinghouse. By the end of April 2001, the website had received almost 350,000 hits, and more than 7,300 complaints had been submitted electronically.

Non-Traditional Education Program

The Program also uses a variety of creative, non-traditional methods to get its messages across to consumers. For example:

- ***"Teaser" websites*** mimic fraudulent sites in an attempt to reach web consumers at "the teachable" moment - when they are searching for a particular product or service. The Program creates products and services that are "too good to be true" but that attract consumer attention. (www.wemarket4u.net)

- ***Web "banner" public service messages*** are posted on the FTC Website, distributed and marketed to partners and news media, and available for downloading; and
- ***Classified ads*** are run as public service messages when newspapers and websites have the space.

www.consumer.gov

The Commission launched this "one stop" site for federal consumer information with four partner agencies (FDA, CPSC, NHTSA and SEC) in December 1997.[61] Today, the site links to consumer information, arranged into 10 broad topic areas, from more than 170 federal agencies. More than 182,500 visits to the site were recorded from October 2000 through March 2001. The site has also become the consumer information portal for FirstGov.gov, the public-private partnership led by a cross-agency board and administered by the Office of FirstGov in the General Services Administration's Office of Governmentwide Policy.

The site continues to be used to implement special initiatives: For example, the President's Council on Y2K Conversion asked the FTC to establish a Y2K consumer information site in the months leading up to the turn of the century; the Quality Interagency Coordination Task Force requested a special site on health care quality; and the U.S. Postal Inspection Service asked that *consumer.gov* house the site supporting the kNOw Fraud initiative, an ongoing public-private campaign launched with the sending of postcards about telemarketing fraud to 115 million American households in the fall of 1999.

National Consumer Protection Week

Along with the AARP, the National Consumers League, the US Postal Inspection Service, the National Association of Consumer Agency Administrators, and the National Association of Attorneys General, the FTC spearheads an annual National Consumer Protection Week to highlight consumer education efforts across the country. Traditionally held during the first week in February, NCPW has highlighted efforts on shopping from home (Armchair Armor: Shopping From Home), fair lending practices (Seeing Red? High Cost Loans are Danger Zones), and credit (Know the Rules, Use the Tools). All materials are downloadable from www.consumer.gov/ncpw

Recent FTC Publications of Particular Relevance to Older Consumers

Although the Program's publications are of interest to consumers of all ages, some have special relevance to older people. Below is a sample of our "Best Sellers."

Buying Gold and Gemstone Jewelry: The Heart of the Matter
http://www.ftc.gov/bcp/conline/pubs/alerts/goldalrt.htm

Cooling Your Home: Don't Sweat It
http://www.ftc.gov/bcp/conline/pubs/alerts/coolalrt.htm

Funerals: A Consumer Guide
http://www.ftc.gov/bcp/conline/pubs/services/funeral.htm

Gas-Saving Products: Facts or Fuelishness?
http://www.ftc.gov/bcp/conline/pubs/autos/gasave.htm

How To Be Penny Wise, Not Pump Fuelish
http://www.ftc.gov/bcp/conline/pubs/alerts/fuelalrt.htm

Holiday Shopping Tips
http://www.ftc.gov/bcp/conline/edcams/holiday/

Holiday Shopping? Free Tips from the FTC
http://www.ftc.gov/bcp/conline/pubs/alerts/shopalrt.htm

Holiday Shopping: Is a Sale Price Your Best Deal?
http://www.ftc.gov/bcp/conline/pubs/alerts/salealrt.htm

High-Rate, High-Fee Loans (Section 32 Mortgages)
http://www.ftc.gov/bcp/conline/pubs/homes/32mortgs.htm

Need a Loan? Think Twice About Using Your Home as Collateral
http://www.ftc.gov/bcp/conline/pubs/alerts/hoepalrt.htm

Home Insulation Basics: Higher R-Values = Higher Insulating Values
http://www.ftc.gov/bcp/conline/pubs/alerts/rvaluealrt.htm

How to Buy An Energy-Efficient Home Appliance
http://www.ftc.gov/bcp/conline/pubs/homes/applnces.htm

Living Trust Offers: How to Make Sure They're Trust-worthy
http://www.ftc.gov/bcp/conline/pubs/services/livtrust.htm

Prenotification Negative Option Plans
http://www.ftc.gov/bcp/conline/pubs/products/negative.htm

Top 10 Dot Cons: Consumer Information
http://www.ftc.gov/bcp/conline/edcams/dotcon/

Trial Offers: The Deal Is in the Details
http://www.ftc.gov/bcp/conline/pubs/products/trialoffers.htm

Weathering the High Cost of Heating Your Home
http://www.ftc.gov/bcp/conline/pubs/alerts/heatalrt.htm

Y2K Consumer Protection Efforts

[Removed from website]

THE COMPETITION MISSION

This section describes Commission antitrust enforcement activities during the January 1999-August 2001 period, with a focus on both mergers and allegedly anticompetitive agreements between and among firms whose products and services are of particular significance to senior citizens, particularly in the health care, energy, supermarket, and funeral service sectors.

Health Care Sector

Older Americans benefit from lower costs and higher quality health care services as a result of robust competition. During the January 1999-August 2001 period, the Commission's antitrust law enforcement actions addressed transactions and practices which the Commission had a reason to believe would substantially lessen competition among providers of health care goods and services. Commission antitrust enforcement activity in the health care area, while varied in detail, tends to address transactions which fall within one of three general categories: (1) mergers between pharmaceutical companies, and mergers between medical device/information technology companies; (2) allegedly anticompetitive agreements among pharmaceutical manufacturers and among health care providers; and (3) hospital mergers. Transactions in all of these categories are of particular importance to older consumers, because their health care needs are relatively greater than those of other groups, and a greater percentage of their income is likely to be devoted to health care expenditures.

Pharmaceutical and Medical Device/Information Technology Mergers

Pharmaceutical prices are of particular importance to older consumers. Although approximately 13 percent of the U.S. population is over the age of 65, people who fall within this age category consume more than 33 percent of all prescription drugs dispensed in the United States, and (excluding insurance premiums) medicines account for approximately 34 percent of the health care costs paid by people within this age category. Accordingly, addressing the potential anticompetitive effects of large mergers in the pharmaceutical industry is of special importance to older consumers, and the Commission has continued to carefully monitor merger and acquisition activity in both the manufacturing and the distribution contexts.

For example, in *Glaxo Wellcome plc and Smith Kline Beecham plc, Docket No. C-3990* (consent order issued January 26, 2001), the Commission issued a consent order imposing a number of requirements upon the merging pharmaceutical manufacturers -- to address a number of competitive concerns arising from the transaction -- as a condition to permitting the merger to proceed. The complaint alleged that the merger of Glaxo Wellcome (Glaxo) and SmithKline Beecham (SB) would create the world's largest research-based pharmaceutical manufacturer, substantially lessen competition in nine separate pharmaceutical markets, and result in fewer consumer choices, higher prices and less innovation. The order required divestiture in six markets:

1) antiemetic drugs: Glaxo and SB accounted for 90 percent of the sales of these new generation drugs used in chemotherapy to reduce the incidence of side effects. The order required the divestiture of the worldwide rights of SB's drug Kytril to F. Hoffman

LaRoche;
2) the antibiotic ceftazidime: Glaxo and SB were the only two manufacturers of ceftazidime, and Glaxo was the largest of three firms marketing ceftazidime. The order required the divestiture of SB's U.S. rights to manufacture and market ceftazidime to Abbott Laboratories;
3) oral and intravenous antiviral drugs for the treatment of herpes, chicken pox and shingles: Glaxo's Valtrex and SB's Famvir were the only second-generation antiviral prescription drugs available on the market, and no other companies have similar products in development. The order required the divestiture of SB's antiviral drug Famvir to Novartis;
4) topical antiviral drugs for the treatment of herpes cold sores: SB's Denavir was the only FDA approved prescription topical antiviral drug sold in the U.S., and Glaxo, the only potential entrant into the market, was seeking FDA approval to market its European antiviral Zovirex in the U.S. The order required SB to divest Denavir to Novartis;
5) prophylactic vaccines for the treatment of herpes: Glaxo and SB were the leading two of only a few firms pursuing the development of a preventative vaccine. The order required Glaxo to return to its British collaborator, Cantab Pharmaceuticals, all rights to its technology for the development of a prophylactic herpes vaccine; and
6) over-the counter H-2 acid blocker relief products: Glaxo's Zantac 75 and SB's Tagamet were two of the four branded OTC H-2 acid blockers on the market. The order required the divestiture of Glaxo's U.S. and Canadian Zantac trademark rights to Pfizer.

In three markets the order addressed competitive overlaps with other research and development firms where the merger was likely to result in delay, termination, or failure to develop as a competitor, by requiring the assignment of certain intellectual property rights:
1) topoisomerase I inhibitor drugs used to treat certain tumors: SB's Hycamptin was a second line therapy for non-small cell lung cancers and SB was developing a first line therapy for colorectal and other solid-tumor cancers. Glaxo, through a collaboration with Gilead Sciences, was developing a drug, GI147211C, which would have been in direct competition with SB's Hycamptin. Only one other company manufactured similar anti-tumor drugs. The order required Glaxo to assign all of its relevant intellectual property rights and relinquish all of Glaxo's reversionary rights to GI147211C to Gilead Sciences;
2) migraine headache treatment drugs: Glaxo's Immitrex and Amerge were the leading sellers of triptan drugs for the treatment of migraine headache. SB had an interest in another triptan drug, frovatriptan, which was being developed and scheduled for launch by Vernalis Ltd. in the second half of 2001. The order required SB to assign all of its intellectual property rights and relinquish all options to regain control over frovatriptan to Vernalis Ltd; and
3) drugs to treat irritable bowel syndrome: Glaxo owned and was conducting clinical trials on Lotronex, which had been taken off the market because of possible side effects. SB had an option to acquire and market renzapride which was being developed by the British firm Alizyme Therapeutics plc. Because the merger would eliminate one of the few efforts underway to develop a drug for the treatment of irritable bowel syndrome, the

order required SB to assign all of its intellectual property rights and relinquish all options to regain control over renzapride to Alizyme.

In *Pfizer Inc. and Warner-Lambert Company, Docket No. C-3957* (consent order issued July 27, 2000), the complaint alleged that Pfizer's acquisition of Warner-Lambert Company would lessen competition in four pharmaceutical markets, and the consent order therefore included provisions intended to prevent that alleged lessening of competition with respect to the following drugs:

1) antidepressant drugs called selective serotonin reuptake inhibitors (SSRIs) and selective norepinephrine reuptake inhibitors (SNRIs), in which Pfizer manufactured Zoloft, the second largest selling SSRI, and Warner and Forest Laboratories co-promoted Celexa, the fastest-growing SSRI. The order required Warner to end its co-promotion agreement with Forest, return all confidential information regarding Celexa to Forest, maintain the confidentiality of all Celexa marketing information, and prohibited former Warner sales employees involved in marketing Celexa from selling Zoloft until March 2001;

2) pediculicides or treatments for head lice infestation, in which Pfizer and Warner were the two largest manufacturers and accounted for approximately 60 percent of the market. The order required Pfizer to divest its brand RID to Bayer Corporation;

3) drugs for treating Alzheimer's disease, in which Pfizer's Aricept and Warner's Cognex were the only two drugs sold in the U.S. for the treatment of Alzheimer's disease. The order required the divestiture of Cognex to First Horizon; and

4) EGFr-tk inhibitors, which are drugs used to treat solid tumor cancers, in which Pfizer and Warner were the two most advanced among four companies developing EGFr-tk inhibitors. The order required Pfizer to return its EGFr-tk inhibitor, CP-358,774, along with its technology and know-how assets to its development partner OSI, to grant OSI an irrevocable worldwide license to its rights and patents jointly owned with Pfizer, to provide OSI with a manufacturing and supply agreement for the continued supply of CP-358,774 until the transfer of the manufacturing technology to a new manufacturer, and to pay OSI's costs for completing clinical trials on the drug. The order also provided for the appointment of an interim trustee to ensure that the development of CP-358,774 is maintained in the future.

In *Zeneca Group plc, Docket No. C-3880* (consent order issued June 7, 1999), the complaint and consent order concerned long-acting local anesthetics, which are pharmaceutical products used to relieve pain during the course of surgical or other medical procedures, without the use of general anesthesia. For certain procedures, long-acting local anesthetics are the only viable anesthetic. The complaint alleged that Zeneca entered into an agreement with Chiroscience Group plc to market and assist in the development of levobupivacaine, a new long-acting local anesthetic being developed by Chiroscience. The complaint further alleged that Zeneca proposed to acquire Astra, the leading supplier of long-acting local anesthetics, and one of only two companies approved by the FDA for the manufacture and sale of these kinds of drugs in the United States. The complaint further alleged that while Zeneca did not currently participate in the market for long-acting local anesthetics, it was a potential competitor -- by virtue of its agreement with Chiroscience -- and that the acquisition therefore would eliminate a significant source of new competition. The consent order required Zeneca to transfer and surrender all of its rights and assets relating to levobupivacaine to Chiroscience,[62] and to divest its approximately 3 percent investment interest in Chiroscience.

In *Merck/Medco, Docket No. C-3853* (consent order issued February 18, 1999), the Commission issued a consent order against Merck and Co., Inc. (Merck), a leading pharmaceutical manufacturer, and its subsidiary, Merck-Medco Managed Care, LLC (Medco) to resolve antitrust concerns resulting from Merck's acquisition of Medco. The complaint alleged that Merck's ownership of Medco, the largest pharmacy benefits manager ("PBM") in the United States, would allow Merck to favor its own drugs on Medco's formularies, leading to higher prices and reduced quality. PBMs serve as middlemen in the provision of prescription drugs to managed care plans. A PBM's formulary often affects drug choice and reimbursement under certain health plans. The order requires Merck/Medco to maintain an open formulary, whereby drugs are selected according to objective criteria by an independent panel of physicians, pharmacists, and others, known as a Pharmacy and Therapeutics Committee.

In *Tyco International, Ltd./Mallinckrodt, Inc., Docket No. C-3985* (consent order issued December 1, 2000), the consent order addressed antitrust concerns stemming from the $4.2 billion acquisition of Mallinckrodt, Inc. by Tyco International, Ltd. The complaint alleged that both Tyco and Mallinckrodt were leading suppliers of disposable medical supplies, and were head to head competitors in the $47 million market for endotracheal tubes, which are the principal means by which anesthesia and oxygen are administered to patients in operating and emergency room settings. The consent order, while permitting the acquisition, required Tyco to divest its endotracheal tube business to Hudson RCI, a California-based company

In *Hoechst AG/Rhone-Poulenc S.A., Docket No. C-3919* (consent order issued January 18, 2000) the consent order settled allegations in an accompanying administrative complaint that the merger of Hoechst AG and Rhone-Poulenc S.A. to create Aventis S.A. would violate federal law by restraining competition in the markets for thrombin inhibitors (drugs used in the treatment of blood clotting diseases), new anticlotting drugs, and cellulose acetate, a widely used thermoplastic. In particular, the complaint alleged that Hoechst sold Refludan, the only direct thrombin inhibitor currently sold in the U.S. market; that Rhone-Poulenc was in the final stages of developing its own direct thrombin inhibitor, Revasc; and that the merger consequently would both eliminate direct competition between Hoechst and Rhone-Poulenc and reduce potential competition and innovation competition among researchers and developers of direct thrombin inhibitors. The consent order consequently required Aventis to transfer all of Rhone-Poulenc's rights for Revasc to Novartis or some other third party, and to enter into a short term service agreement with the acquirer of Revasc in order to ensure the continued performance of development work on Revasc. The consent order also required Aventis to divest its interest in Rhodia, its specialty chemicals subsidiary (which produced cellulose acetate) to a level of five percent or less -- and to sequester that interest pending its divestiture -- thereby preserving competition in the manufacture, marketing and sale of cellulose acetate thermoplastics.

In *FTC v. The Hearst Trust, et al., Civ. Action No. 1-01CV00734* (D.D.C. filed March 5, 2001), the Commission filed a complaint in U.S. District Court alleging that Hearst and its wholly owned subsidiary, First DataBank Inc., illegally acquired a monopoly over key types of drug information databases used by pharmacists, other health care professionals, hospitals, and health plans. According to the complaint, the 1998 acquisition of Medi-Span, Inc. allowed First DataBank to institute substantial price increases to its customers who rely on the databases for clinical, pricing and other information on prescription and non-prescription drugs. The complaint also alleges that Hearst illegally withheld several high-level corporate documents prepared to evaluate the competitive impact of the Medi-Span acquisition, and that Hearst was required to provide those documents to the antitrust agencies prior to the merger to help them determine whether a full pre-merger antitrust review of the acquisition was needed. The complaint asks the Court to order Hearst to create and divest a new competitor to replace Medi-Span -- and to forfeit the illegally gained profits from the allegedly anticompetitive price increases -- and the litigation continues.

In *Medtronic, Inc./Avecor Cardiovascular, Inc., Docket No. C-3879,* (consent order issued on June 3, 1999), Medtronic, Inc. agreed to divest Avecor's non-occlusive arterial pump assets to settle Commission charges that Medtronic's $106 million acquisition of its competitor would lessen competition for the research, development, manufacture and sale of non-occlusive arterial pumps in the United States. The complaint alleged that entry into the market would not be timely, likely or sufficient to prevent adverse competitive effects, and that there are no competitive substitutes for non-occlusive arterial pumps, which are perfusion devices used in heart/lung machines. The consent order therefore required the divestiture of certain assets to Baxter Healthcare Corporation.

In *Sorin Biomedica S.p.A./COBE Cardiovascular, Inc. et al., File No. 9910095, Docket No. C-3889* (consent order issued on July 28, 1999) the complaint alleged that the proposed acquisition of COBE Cardiovascular, Inc., COBE Laboratories Inc., and other assets and liabilities from Gambro AB, by Sorin Biomedica S.p.A., would eliminate substantial competition between SNIA and Gambro in the market for research, development, manufacture and sale of heart-lung machines. Such machines are the durable equipment portion of an extracorporeal bypass system that replaces the function of the heart and lungs by circulating and supplying oxygen to a patient's blood during open heart surgery. The consent order, while permitting the acquisition, required SNIA to divest all of COBE's heart-lung machine business to Baxter Healthcare Corporation within ten days after the FTC accepted the consent agreement for public comment.

Allegedly Anticompetitive Agreements

One of the core areas of antitrust enforcement addresses allegedly anticompetitive agreements; that is, agreements among the providers of a good or a service which allegedly increase prices, reduce product quality, or in some other way artificially reduce the level of competition between the providers. Such agreements among pharmaceutical manufacturers or among health care providers may deprive older Americans of the ability to obtain prescription drugs or treatment at competitive price and quality levels. The Commission therefore addressed a number of allegedly anticompetitive agreements among pharmaceutical manufacturers and among health care providers in 1999 and 2000.

As an example, the Commission filed a complaint in U.S. District Court against four pharmaceutical companies in *FTC v. Mylan Laboratories et al., 62 F. Supp. 2d 25* (D.D.C. 1999); 32 State Attorneys General filed parallel federal court actions. One of the defendants, Mylan, is the nation's second largest manufacturer of generic drugs, and it produces, among other drugs, the generic drugs lorazepam and clorazepate, which are widely prescribed to treat anxiety and hypertension. The complaint alleged that the defendants used licensing arrangements and other practices to restrain trade, monopolize, attempt to monopolize, and conspire to monopolize the markets for lorazepam and clorazepate, in violation of Section 5(a) of the FTC Act. In particular, the complaint alleged that Mylan entered into exclusive licensing agreements with the principal manufacturers of the active ingredients used in those drugs, with the effect of foreclosing substantially the supply of those ingredients to its competitors.

The complaint further alleged that in January 1998 Mylan raised the wholesale price of 7.5 mg clorazepate tablets from $11.36 to approximately $377.00 per 500-tablet bottle, and that in March 1998 it raised the wholesale price of 1 mg lorazepam tablets from $7.30 to $191.00 per 500-tablet bottle. The complaint alleged that as a result of these price increases, many purchasers -- including pharmacies, hospitals, insurers, managed care organizations, wholesalers, and government agencies -- paid substantially higher prices, and that some patients may have stopped taking lorazepam and clorazepate tablets altogether, or may have been forced to reduce the quantity they take, because they could not afford them. The complaint sought a permanent injunction against conduct violating Section 5(a); rescission of the unlawful licensing arrangements; and other equitable relief, including disgorgement and restitution in an amount exceeding $120 million plus interest.

On November 29, 2000, the Commission approved a proposed settlement under which Mylan agreed to pay $100 million for distribution to injured consumers and state agencies, and to an injunction preventing them and the other defendants from engaging in similar conduct in the future. The States also approved the agreement, and on February 9, 2001, the U.S. District Court entered the Stipulated Permanent Injunction agreed to by the parties. On April 27, 2001, the District Court preliminarily approved a distribution plan for the $100 million, requiring Mylan to place the funds in an escrow account for distribution to purchasers of lorazepam and/or clorazepate during the time period covered by the settlement.

In addition to the litigated case in *Mylan*, the Commission secured 14 consent orders during the January 1999-August 2001 period, pursuant to which pharmaceutical manufacturers and health care providers agreed to cease using a variety of allegedly anticompetitive practices. In *FMC Corporation/Asahi Chemical, File No. 9810237* (announced on December 20, 2000), for example, the complaint alleged the existence of a conspiracy to monopolize a binder used in nearly all pharmaceutical tablets sold in the United States. In particular, the complaint alleged that for more than a decade, FMC Corporation ("FMC") -- based in Chicago, Illinois and the largest manufacturer and seller of microcrystalline cellulose ("MCC") in the world -- attempted to neutralize or eliminate competing MCC sellers and to secure monopoly power within the market. To accomplish this, the complaint alleged, in or around 1984, FMC entered into a conspiracy with Asahi Chemical, based in Tokyo, to divide the MCC market into two territories; that is, FMC allegedly agreed not to sell any MCC product to customers in Japan or East Asia without Asahi Chemical's consent, and Asahi Chemical allegedly agreed not to sell such products to customers in North America or Europe without the consent of FMC. According to the complaint, FMC also sought agreements with three smaller MCC manufacturers to maintain its monopoly position. Under the terms of the proposed consent order, FMC and Asahi Chemical would be prohibited from: (1) agreeing with competitors to divide or allocate markets, customers, contracts or geographic territories in connection with the sale of MCC, and (2) agreeing with competitors to refrain in whole or in part from producing, selling or marketing MCC. Both companies would also be barred from inviting or soliciting other companies to enter into agreements not to compete in this market. In addition, the proposed order would prohibit FMC for 10 years from acting as the U.S. distributor for any competing manufacturer of MCC (including Asahi Chemical), and for five years would prohibit FMC from distributing in the United States any other product manufactured by Asahi Chemical. The proposed order contains several limited exemptions to these prohibitions which would allow FMC and Asahi to engage in certain lawful and procompetitive activities. For example, each company would be able to enter into exclusive trademark license agreements, enforce its intellectual property rights, and abide by reasonable restraints in conjunction with a lawful joint venture agreement.

The Commission has also become concerned about potential abuse of the regulatory framework governing the entry of generic drug products that compete with branded pharmaceuticals. Under the Drug Price Competition and Patent Term Restoration Act of 1984, commonly known as the Hatch-Waxman Act, a company can seek approval from the Food and Drug Administration to market a generic drug before the expiration of a patent relating to the brand-name drug upon which the generic is based. In these cases, the generic drug manufacturer certifies in its Abbreviated New Drug Application (ANDA) that the branded product's patent(s) are invalid or will not be infringed by the generic drug for which the ANDA applicant seeks approval. The Act then provides a 45-day window during which the patent holder may file a patent infringement suit against the applicant. If such a suit is filed, the Act forbids the FDA from approving the ANDA for 30 months or until the litigation is completed, whichever comes sooner ("30-month stay"). The provision is generally thought to protect branded companies against patent infringement. To encourage generic competition, the first company to file an ANDA with the FDA is given the exclusive right to market the generic drug for 180 days. No other generic can gain FDA approval until this 180-day period expires ("180-day marketing exclusivity").

The Commission is now conducting a study to determine whether the 30-month stay and 180-day marketing exclusivity provisions of the Hatch-Waxman Act have encouraged generic competition or facilitated the use of anticompetitive strategies. In addition, in light of the FTC's investigations of several cases in which the manufacturers of brand name drug products and generic competitors have allegedly entered into anticompetitive agreements to delay generic entry, the study is also examining the use of agreements between pharmaceutical companies, and any other strategies, which may delay generic drug competition.

The Commission has also initiated a number of law enforcement actions addressing allegedly anticompetitive arrangements between brand-name and generic drug manufacturers. Thus, for example, in *Schering-Plough Corporation, et. al., Docket No. 9297* (complaint issued March 30, 2001), the Commission issued a complaint alleging that three drug manufacturers -- Schering-Plough Corporation (Schering), Upsher-Smith Laboratories (Upsher-Smith), and American Home Products Corporation -- entered into anticompetitive agreements aimed at keeping low-cost generic drugs off the market. The FTC's administrative complaint alleges that Schering, the maker of K-Dur 20 -- a widely prescribed potassium chloride supplement used to treat patients with low blood potassium levels (a condition that most commonly occurs in people taking certain drugs to treat high blood pressure and that can lead to dangerous cardiac problems) -- made illegal payments to Upsher-Smith and American Home Products to induce them to delay launching their generic versions of the drug beyond the date they might have agreed to without such payments. The complaint further alleges that the agreements have cost consumers more than $100 million.

The complaint includes more detailed allegations as to the chronology of events. In particular, it alleges that Schering sued Upsher, a generic drug manufacturer, for patent infringement after Upsher sought FDA approval to manufacture and distribute Klor Con M20, a generic version of K-Dur 20. The complaint alleges that Schering and Upsher reached an agreement in 1997 to settle the patent infringement lawsuit, whereby Schering paid Upsher $60 million dollars not to market any generic version of K-Dur 20 until September, 2001. The complaint further alleges that while, under the agreement, Schering received licenses to market five of Upsher's products, the value of the licenses had little relation to the $60 million dollar payment, and the effect of the agreement was to ensure that no other company's generic K-Dur 20 could obtain FDA approval and enter the market during the term of the agreement.

The complaint further alleges that Schering agreed to pay ESI Lederle, Inc. -- a division of American Home Products -- up to $30 million to delay marketing its generic version of K-Dur 20. The complaint alleges that Schering sued ESI for patent infringement after ESI sought FDA approval to manufacture and distribute its generic version of K-Dur 20. As part of a subsequent patent infringement litigation settlement, the complaint alleges that ESI agreed, in exchange for the payments, not to market any generic version of K-Dur 20, until January 2004, and to market only one generic version between January 2004 and September 2006 when Schering's patent expired. According to the complaint, ESI also agreed not to prepare, or to help any other firm prepare, bioequivalence studies necessary for FDA approval of an application for a generic version of K-Dur 20 until September 2006. As part of the agreement, the complaint alleges that ESI also granted Schering a license to two of its generic products, but further alleges that the payment was designed to delay the entry of a generic version of K-Dur 20, and was not based on the value of the licenses to the two generic products. Counsel supporting the complaint are seeking an order that would prohibit the respondents from entering into: (1) a settlement of patent infringement litigation which involves restraints on the research, development, manufacture, marketing, or sale of a "non-infringing" drug product; (2) any agreement in which one party agrees to refrain from conducting or assisting a bioequivalence study of a product to the NDA holder's drug product; and (3) any agreement in which the NDA holder provides anything of value to the alleged infringer in return for the alleged infringer not selling a drug product for any period of time. Counsel for the complaint are also seeking an order provision that would require Schering to immediately license its '743 patent (the formulation patent for K-Dur 20 and K-Dur 10) to Upsher and ESI, and would require Upsher to relinquish its right to the 180-day exclusivity period for Klor Con M20, its generic version of K-Dur 20.

In *Hoechst Marion Roussel, Inc., Carderm Capital L.P., and Andrx Corp., Docket No. 9293* (consent order issued on May 8, 2001), the Commission issued a complaint alleging that Hoechst and Andrx entered into an agreement in which Andrx was paid millions of dollars to delay bringing to market a competitive generic alternative to Cardizem CD. Andrx, a generic drug manufacturer, was the first to file for FDA approval to market its generic version Cardizem

CD, Hoechst's brand name hypertension and angina drug, but was then sued by Hoechst for patent infringement. Because certain provisions of the Hatch-Waxman Act grant the initial generic manufacturer a 180-day market exclusivity period, the complaint alleged that the effect of the agreement was to ensure that no other company's generic drug could obtain FDA approval and enter the market during the term of the agreement. Under the agreement, according to the complaint, Andrx agreed not to market its product when it received FDA approval, not to give up or relinquish its 180-day exclusivity right, and not to market a non-infringing generic version of Cardizem CD during the ongoing patent litigation. The consent order subsequently issued to settle the complaint allegations prohibits the respondents from entering into agreements in which the first generic company to file an ANDA agrees that it: (1) will not relinquish its rights to the 180-day exclusivity period; and (2) will not develop or market a non-infringing generic drug product. The consent order also requires Hoechst and Andrx to notify the Commission, and obtain court approval, before entering into any agreements involving payments to a generic company in which the generic company temporarily refrains from bringing a generic drug to market.

In *Abbott Laboratories and Geneva Pharmaceuticals, Inc. Docket Nos. C-3945, C-3946* (consent orders issued on May 22, 2000), the complaint alleged that Abbott paid Geneva $4.5 million per month to delay bringing to market a generic alternative to Abbott's brand-name hypertension and prostate drug, Hytrin. Geneva, a generic drug manufacturer, sought and received FDA approval to market its generic capsule version. After Geneva received FDA approval, Abbott and Geneva reached an agreement under which Geneva would not bring a generic version of Hytrin to market during the ongoing patent litigation on Geneva's tablet version of Hytrin, in exchange for the $4.5 million monthly payment, an amount which exceeded the amount Abbott estimated Geneva would have earned if it had actually marketed the generic drug. Because of the provisions of the Hatch-Waxman Act noted above, which grant the initial generic manufacturer a 180-day market exclusivity period, the complaint alleged that the effect of the agreement was to ensure that no other company's generic Hytrin could obtain FDA approval and enter the market during the term of the agreement. The consent orders prohibit Abbott and Geneva from entering into agreements in which a generic company agrees with the brand drug manufacturer that it: (1) will give up or transfer its Hatch-Waxman Act 180-day exclusivity rights, and (2) will not enter the market with a non-infringing product. In addition, the orders require that agreements involving payments to a generic company to stay off the market during the pendency of patent litigation be approved by the court with notice to the Commission. Geneva was also required to waive its right to a 180-day exclusivity period for its generic tablet, so other generic tablets could immediately enter the market. In a statement accompanying the consent orders, the Commission stated that in the future it will consider its entire range of remedies in enforcement actions against similar arrangements, including seeking disgorgement of illegally obtained profits.

Investigations initiated by Commission staff have also revealed allegedly anticompetitive agreements among health care providers. For example, in *Alaska Healthcare Network, Inc., Docket No. C-4007* (consent order issued on April 25, 2001), the complaint alleged that the Alaska Healthcare Network, Inc. (AHN) – an association of 86 physicians practicing in the Fairbanks, Alaska area -- restrained competition among physicians and blocked or delayed the entry of health care plans into the Fairbanks area. AHN included approximately 63 percent of all physicians in full-time, year-round private practice in Fairbanks. The complaint further alleged that -- acting as the de facto collective bargaining agent for its members -- AHN fixed prices and other terms when contracting with HMOs and other healthcare payers, refused to deal with payers except on collectively agreed-upon terms, and encouraged its members not to deal with any health plan in any manner except through AHN. The consent order prohibits AHN from: (1) negotiating or refusing to deal with health plans; (2) determining the terms upon which physicians deal with health plans; and (3) restricting the ability of physicians to deal with any health plan, whether on an individual basis or through any other arrangement. The order also imposes a structural remedy for a period of five years, which requires that if AHN operates a qualified risk-sharing or clinically-integrated joint arrangement, AHN-participating physicians can constitute no more than 30 percent of Fairbanks physicians in five medical specialties. Also, when offering the services of its physicians through any other arrangement permitted by the order, AHN's participating physicians may constitute no more than 50 percent of Fairbanks physicians in those specialties.

In *Texas Surgeons, P.A., Docket No. C-3944* (consent order issued on May 18, 2000), the complaint alleged that Texas Surgeons, P.A., an independent physician association, restrained competition among general surgeons in the Austin, Texas area, resulting in more than $1,000,000 in increased costs for surgical services in 1998 and 1999. According to the complaint, the IPA collectively refused to deal with two health plans, terminated contracts with Blue Cross of Texas, and threatened to terminate contracts with United HealthCare of Texas if the payer did not comply with the association's demand for rate increases. Both plans increased their rates in response to the IPA's demands. The order prohibits the IPA from: (1) negotiating on behalf of any physician with health plans; (2) refusing to deal or threatening to refuse to deal with health plans; (3) determining the terms on which its members deal with health plans; and (4) restricting the ability of any physicians to deal with any payer or provider individually or through any other arrangement. The order also prohibits the respondent from exchanging information among Austin-area physicians concerning negotiations with any health plan regarding reimbursement terms, or any physician's intent to refuse to deal with any health plan. The order does allow the IPA to operate any "qualified risk-sharing joint arrangement" or any "qualified clinically integrated joint arrangement" as reflected in the 1996 FTC/DOJ Statements of Antitrust Enforcement Policy in Health Care.[63]

In *Colegio de Cirujanos Dentistas de Puerto Rico, Docket No. C-3953* (consent order issued on June 12, 2000), the complaint alleged that an association of approximately 1800 dentists, acting as the collective bargaining agent for its members, fixed prices, boycotted payers to obtain higher reimbursement rates, and restrained truthful advertising by its members. The association, comprising almost all dentists practicing in Puerto Rico, negotiated with numerous payers about fees and set the terms its members would accept from the payers. The complaint also alleged that the association used its Code of Ethics to ban truthful advertising by dentists who advertised their willingness to accept patients from neighboring areas where dentists were conducting a boycott of the Reform, a government program to provide medical services to the indigent. The order prohibits the association from negotiating on behalf of any dentists with payers or providers, refusing to deal with or boycotting payers, determining the terms upon which dentists will deal with providers, and restricting or interfering with truthful advertising or solicitation concerning dental services.

In *Wisconsin Chiropractic Association, Docket No. C-3943* (consent order issued on May 18, 2000), the complaint alleged that the Wisconsin Chiropractic Association and its executive director conspired to boycott third-party payers to obtain higher reimbursement rates, thereby increasing prices for chiropractic services. The Wisconsin Chiropractic Association has 900 members, and represents about 90 percent of the chiropractors licensed in the state. According to the complaint, the association, in response to the introduction of new billing codes by private insurers and the federal government, advised its members to collectively raise their prices to specific levels, circulated fee schedules to coordinate pricing among its members, advised members to discuss contract offers to improve their bargaining position with payers, and assisted in boycotts of two payers to obtain higher reimbursement rates. The order prohibits the association from fixing prices or encouraging others to fix prices for chiropractic services, boycotting any payer, or negotiating on behalf of any chiropractor or group of chiropractors. The order also prohibits the association from initiating, conducting, or distributing any fee surveys for healthcare goods or services prior to December 31, 2001. In addition, for five years thereafter, the WCA may conduct or distribute fee surveys only if the surveys conform to the safe harbor provisions regarding fee surveys contained in the 1996 FTC/DOJ Statements of Antitrust Enforcement Policy in Health Care.

In *Michael T. Berkley, D.C. and Mark A. Cassellius, D.C., Docket No. C-3936*, (consent order issued on April 11, 2000), the Commission filed a complaint alleging that two chiropractors conspired to fix prices for chiropractic services in the La Crosse, Wisconsin area, and boycotted the Gundersen Lutheran Health Plan to obtain higher reimbursement for chiropractic services. As a result of the boycott, Gundersen increased its reimbursement rates by 20 percent. The consent order is similar to the Wisconsin Chiropractic Association order (discussed above), and prohibits Drs. Berkley and Cassellius from fixing prices for chiropractic services, engaging in collective negotiations on behalf of other chiropractors, and orchestrating concerted refusals to deal. The order does allow the chiropractors to engage in conduct -- including collectively determining reimbursement and other terms of contracts with payers -- that is reasonably necessary to operate a "qualified risk-sharing joint arrangement," or a "qualified clinically integrated joint arrangement," as reflected in the 1996 FTC/DOJ Statements of Antitrust Enforcement Policy in Health Care.

In *North Lake Tahoe Medical Group, Inc., Docket No. C-3885* (consent order issued on July 21, 1999), the complaint alleged that North Lake Tahoe Medical Group, Inc. (Tahoe IPA), an independent physician association, restrained competition among physicians and delayed the entry of managed care into the Lake Tahoe Basin in California. Tahoe IPA, based in Truckee, California, is composed of ninety-one physicians comprising 70 percent of the physicians practicing in the Lake Tahoe area. The complaint further alleged that the IPA conspired to fix prices, engaged in collective negotiations over prices with payers, and refused to deal with Blue Shield of California and other third party payers when they did not comply with the Tahoe IPA's plans. The order prohibits the IPA from: (1) engaging in collective negotiations on behalf of its members; (2) orchestrating concerted refusals to deal; (3) fixing prices, or other terms, on which its members deal; and (4) restricting the ability of any physician to deal with any payer or provider individually or through any arrangement outside of Tahoe IPA. The order also requires Tahoe IPA to terminate the membership of physicians who refused to deal (or gave notice of their intent to refuse to deal) with Blue Shield, unless the physicians make a good faith effort to reparticipate and continue to participate in Blue Shield for a period of six months. The order does allow the IPA to operate any "qualified risk-sharing joint arrangement," or, upon prior notice to the Commission, any "qualified clinically integrated joint arrangement," as reflected in the 1996 FTC/DOJ Statements of Antitrust Enforcement Policy in Health Care.

In *Mesa County Physicians Independent Practice Association, Inc., Docket No. 9284* (consent order issued on May 4, 1999), the Commission issued a revised complaint and final order against the Mesa County Physicians Independent Practice Association, Inc., an organization whose members comprise 85 percent of all physicians and 90 percent of the primary care physicians in Mesa County, Colorado. According to the complaint, the IPA acted to restrain trade by combining to fix prices and other competitively significant terms of dealing with payers, and collectively refused to deal with third party payers, thereby hindering the development of alternative health care financing and delivery systems in Mesa County. The complaint alleged that the IPA, through its alliance with the Rocky Mountain Health Maintenance Organization, created a substantial obstacle to the ability of other payers to contract with a physician panel in Mesa County. The complaint also alleged that the IPA's Contract Review Committee negotiated collectively on behalf of the IPA's members with several third party payers, using an IPA Board-approved set of guidelines and fee schedule, and that a similar organization formed after the consent order was issued in 1998 engaged in the same conduct. The order prohibits the Mesa County IPA from: (1) engaging in collective negotiations on behalf of its members; (2) collectively refusing to contract with third party payers; (3) acting as the exclusive bargaining agent for its members; (4) restricting its members from dealing with third party payers through an entity other than the IPA; (5) coordinating the terms of contracts with third-party payers with other physician groups in Mesa County or in any county contiguous to Mesa County; (6) exchanging information among physicians about the terms upon which physicians are willing to deal with third-party payers; and (7) encouraging other physicians to engage in activities prohibited by the order. The order also requires the Mesa IPA to abolish its Contract Review Committee, and prohibits the IPA from employing any person or participating physician who is conducting payer contract review. The order, however, allows the respondent to engage: (1) in any "qualified clinically integrated joint arrangement" (with prior notice to the Commission), and (2) in conduct that is reasonably necessary to operate any "qualified risk-sharing joint arrangement" as set forth in the 1996 DOJ/FTC Statements of Antitrust Enforcement Policy in Health Care.

In *Asociacion de Farmacias Region de Arecibo, Docket No. C-3855* (consent order issued on March 2, 1999), the complaint alleged that an association, composed of approximately 125 pharmacies in northern Puerto Rico, fixed the terms and conditions, including fixing prices, of dealing with third party payers, and threatened to withhold services from a government program to provide health care services for indigent patients. The association was formed in 1994 as a vehicle to negotiate with health plans. According to the complaint, in January 1995, the association refused to contract with Triple-S -- the payer for the reform program in northern Puerto Rico -- until Triple-S raised the fees paid to the association's members. Furthermore, in

March 1996, the association threatened to withhold its members' services unless Triple-S rescinded a new fee schedule calling for lower reimbursement fees for the pharmacies. Triple-S acceded to the association's demands and increased fees by 22 percent. The order prohibits the association from negotiating on behalf of any pharmacies with any payer or provider, jointly boycotting or refusing to deal with third party payers, restricting the ability of pharmacies to deal with payers individually, or determining the terms or conditions for dealing with third party payers. The order does allow the association to operate any "qualified risk-sharing joint arrangement" or, upon prior notice to the Commission, any "qualified clinically integrated joint arrangement," as reflected in the 1996 FTC/DOJ Statements of Antitrust Enforcement Policy in Health Care.

In *Ernesto L. Ramirez Torres, D.M.D., et al., Docket No. C-3851* (consent order issued on February 5, 1999), the complaint alleged that a group of dentists -- comprising a majority of the dentists in Juan Diaz, Coamo, and Santa Isabel, Puerto Rico -- fixed prices and engaged in an illegal boycott of a government program to provide dental care for indigent patients. According to the complaint, the dentists threatened a boycott of the reform program if they were not reimbursed at certain prices, and then boycotted the program. After several months, the dentists' price demands were met and they agreed to participate in the program. The order prohibits the dentists from jointly boycotting or refusing to deal with third party payers, or collectively determining any terms or conditions for dealing with third party payers. The order does allow the dentists to operate any "qualified risk-sharing joint arrangement" or, upon notice to the Commission, any "qualified clinically integrated joint arrangement," as reflected in the 1996 FTC/DOJ Statements of Antitrust Enforcement Policy in Health Care.

Hospital Mergers

Changes in the structure of the health care system, including the growth of HMOs, have created increased pressure for cost containment. These pressures have been felt throughout the health care system, which has responded with efforts to reduce costs and to improve efficiency. Hospital mergers have been one tool for reducing costs. While such mergers are often beneficial to consumers, they can be especially harmful to seniors if they lead to an anticompetitive outcome or lack of availability for hospital services in a particular area. As in other industries, the Commission approaches those mergers in a cautious and considered way. The Commission has found that the vast majority of hospital mergers pose no competitive problems and only a relative handful of them are investigated. The agency challenges only those specific mergers which it has reason to believe may substantially lessen competition or tend to create a monopoly, and it seeks a remedy that is carefully tailored to eliminate only the anticompetitive part of the transaction while allowing the remainder to proceed. The level of hospital merger activity has generally tended to decline since its peak in the mid 1990s.

Energy Sector

Older Americans with low and moderate incomes are greatly affected by increases in refined petroleum product prices, as well as by increases in electricity and natural gas prices. The Commission continues to pursue an active law enforcement program in the energy sector.

Petroleum Industry Mergers

During the January 1999-August 2001 period, a substantial level of merger and acquisition activity occurred among several of the world's largest petroleum companies, and the Commission conducted extensive investigations of these transactions. For example, in *Exxon Corporation/Mobil Corporation, Docket No. C-3907* (consent order issued on January 26, 2001), the Commission investigated the merger of two of the world's largest petroleum companies, and issued a consent order settling allegations in an accompanying complaint that the merger would substantially lessen competition or tend to create a monopoly in certain markets for refining and marketing gasoline in the United States. Exxon's operations included, *inter alia*, the operation of petroleum refineries -- including four in the United States -- which made various grades of gasoline, lubricant base stock, and other petroleum products, and sold these products to intermediaries, retailers and consumers; the operation of more than 2,000 gasoline stations in the United States (through ownership or leasing arrangements); and the sale of gasoline to distributors or dealers operating another 6,475 retail outlets throughout the United States. Mobil's operations included, *inter alia*, the operation of petroleum refineries -- also including four in the United States -- which made gasoline, lubricant base stock, and other petroleum products, and sold those products throughout the United States; and the operation of about 7,400 retail outlets selling Mobil-branded gasoline throughout the United States. In December 1998, Exxon and Mobil entered into an agreement to merge the two corporations into a corporation to be known as ExxonMobil Corporation.

The Commission conducted an extensive investigation of the proposed merger, and the resultant complaint alleged that consummation of the merger would violate Section 7 of the Clayton Act and Section 5 of the FTC Act by lessening competition in each of the following markets: (1) the marketing of gasoline in the Northeastern and Mid-Atlantic United States (including the States of Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, and New York (collectively "the Northeast"), and the States of New Jersey, Pennsylvania, Delaware, Maryland, Virginia, and the District of Columbia (collectively the "Mid-Atlantic"), and smaller areas contained therein); (2) the marketing of gasoline in five metropolitan areas in the State of Texas; (3) the marketing of gasoline in Arizona; (4) the refining and marketing of "CARB" gasoline (specially formulated gasoline required in California) in the State of California; (5) the bidding for and refining of jet fuel for the U.S. Navy on the West Coast; (6) the terminaling of light petroleum products in the Boston, Massachusetts, and Washington, D.C., metropolitan areas; (7) the terminaling of light petroleum products in the Norfolk, Virginia, metropolitan area; (8) the transportation of refined light petroleum products to the inland portions of the States of Mississippi, Alabama, Georgia, South Carolina, North Carolina, Virginia, and Tennessee (*i.e.*, the portions more than 50 miles from ports such as Savannah, Charleston, Wilmington and Norfolk) ("inland Southeast"); (9) the transportation of crude oil from the north slope of the State of Alaska via the Trans Alaska Pipeline System ("TAPS"); (10) the importation, terminaling and marketing of gasoline and diesel fuel in the Territory of Guam; (11) the refining and marketing of paraffinic lubricant base oils in the United States and Canada; and (12) the worldwide manufacture and sale of jet turbine lubricants. The Commission also examined competition and the likely effects of the merger in a number of other markets, including the worldwide markets for exploration, development and production of crude oil; markets for crude oil exploration and production in the United States and in parts of the United States; markets for natural gas in the United States; markets for a variety of petrochemical products; and markets for pipeline transportation, terminaling or marketing of gasoline or other fuels in sections of the country other than those alleged in the Complaint. The Commission did not, however, find a reason to believe that the merger would produce likely anticompetitive effects in markets other than the markets alleged in the complaint.

The Commission consent order permitted the merger to proceed but -- in order to remedy the allegedly anticompetitive effects of the merger described in the complaint -- imposed a number of divestiture obligations on the merging parties. In particular, the consent order required the largest retail divestiture in Commission history -- the sale or assignment of 2,431 Exxon and Mobil gas stations in the Northeast and Mid-Atlantic (1,740), California (360), Texas (319) and Guam (12). More particularly, the consent order required ExxonMobil to divest or otherwise surrender control of: (1) all of Mobil's gasoline marketing in the Mid-Atlantic (New Jersey, Pennsylvania, Delaware, Maryland, Virginia, and the District of Columbia), and all of Exxon's gasoline marketing in the Northeast (Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, and New York); (2) Mobil's gasoline marketing in the Austin, Bryan/College Station, Dallas, Houston and San Antonio, Texas, metropolitan areas; (3) Exxon's option to repurchase retail gasoline stores from Tosco Corp. in Arizona; (4) Exxon's refinery located in Benicia, California ("Exxon Benicia Refinery"), and all of Exxon's gasoline marketing in California; (5) the terminal operations of Mobil in Boston and in the Washington, D.C. area, and the ability to exclude a terminal competitor from using Mobil's wharf in Norfolk; (6) either Mobil's interest in the Colonial pipeline or Exxon's interest in the Plantation pipeline; (7) Mobil's interest in TAPS; (8) the terminal and retail operations of Exxon on Guam; (9) a quantity of paraffinic lubricant base oil equivalent to the amount of paraffinic lubricant base oil refined in North America that is controlled by Mobil; and (10) Exxon's jet turbine oil business.

The Commission conducted its investigation of the merger in coordination with the Attorneys General of the States of Alaska, California, Connecticut, Maryland, Massachusetts, New Jersey, New York, Oregon, Pennsylvania, Texas, Vermont, Virginia and Washington. As a result of that joint effort, ExxonMobil also entered into agreements with the States of Alaska, California, Delaware, Maryland, Massachusetts, New Jersey, New York, Oregon, Pennsylvania, Rhode Island, Texas, Vermont, Virginia and Washington, and the District of Columbia, settling allegations developed by the States that the merger would violate both state and federal antitrust laws.

In *BP Amoco p.l.c./Atlantic Richfield Company, File No. 9910192, Docket No. C-3938* (consent order issued on August 25, 2000), the Commission investigated the merger of two other large petroleum companies, and issued a consent order settling allegations in an accompanying complaint that the merger would substantially lessen competition or tend to create a monopoly in certain petroleum markets in the United States. BP Amoco -- a United Kingdom corporation and the world's third largest oil company -- was engaged in exploration, development, and production of crude oil on the Alaskan North Slope ("ANS crude oil"),[64] which it sold to refineries on the West Coast of the United States, Hawaii, and Alaska, and in markets abroad. It also owned capacity on the Trans-Alaska Pipeline System ("TAPS") and leasehold interests in Jones Act tankers. These specialized tankers are used by BP Amoco to transport ANS crude oil from the North Slope production fields to its refinery customers. ARCO, a Delaware corporation, was also engaged in the exploration, development, and production of ANS crude. ARCO also owned capacity on TAPS, and it owned its own Jones Act tankers, which it used to transport ANS crude oil to the West Coast. In addition, ARCO owned and operated two refineries on the West Coast that refine ANS crude oil. Together, BP Amoco and ARCO produced approximately 74 percent of all ANS crude oil. In March 1999, BP Amoco and ARCO entered into an agreement to merge their companies.

The Commission complaint alleged that the proposed merger would violate Section 7 of the Clayton Act and Section 5 of the FTC Act by lessening competition in the markets for: (1) the production, sale and delivery of ANS crude oil;(2) the production, sale and delivery of crude oil used by targeted West Coast refiners; (3) the production, sale and delivery of all crude oil used on the West Coast; (4) the purchase of exploration rights on the Alaskan North Slope; (5) the sale of crude oil transportation on the Trans-Alaska Pipeline System (TAPS); (6) the development for commercial sale of natural gas on the Alaskan North Slope; and (7) the supply of crude oil pipeline transportation to, and crude oil storage in, Cushing, Oklahoma. To remedy these alleged anticompetitive effects, the consent order required BP Amoco to divest certain of ARCO's complete, free-standing businesses, including oil and gas interests, tankers, pipeline interests, real estate exploration data and selected long-term supply agreements. In particular, the consent order required BP Amoco to divest: (1) all of ARCO's assets and interests related to and primarily used with or in connection with ARCO's Alaska businesses; and (2) all of ARCO's assets related to its Cushing, Oklahoma crude oil business.

In *British Petroleum Company p.l.c/Amoco Corporation, Docket No. C-3868* (consent order issued on April 19, 1999), the complaint outlining the charges alleged that the merger of BP and Amoco would lessen competition in: (1) the wholesale sale of gasoline in 30 cities or metropolitan areas in the eastern United States; and (2) the terminaling of gasoline and other light petroleum products in nine specified geographic markets. With respect to wholesale gasoline sales, the complaint alleged that BP and Amoco sold both branded and unbranded gasoline at terminals serving 30 markets -- and consequently set the wholesale prices of their respective gasolines -- and that, as a result of the merger, these markets would become significantly more concentrated. In order to resolve these antitrust concerns, the consent order required the divestiture of 134 gas stations in eight markets in which the companies' ownership overlapped, including all the Amoco retail gas stations in Tallahassee, Florida and Pittsburgh, Pennsylvania, and all the BP stations in Charleston, South Carolina; Charlotte, North Carolina; Columbia, South Carolina; Jackson, Tennessee; Memphis, Tennessee; and Savannah, Georgia. In addition, in all 30 markets -- including markets in which neither BP nor Amoco owned gas stations -- the order required BP Amoco to give the BP and Amoco wholesale customers (both jobbers and open dealers) the option of canceling their franchise and supply agreements with Amoco and BP, freeing them to switch their gas stations to other brands. The consent order also provided that unless retail gasoline sellers representing a specified volume of sales in Toledo and Youngstown, Ohio, agreed to switch to other brands, BP Amoco would have to divest retail gasoline stations with an equivalent volume of sales to an acquirer acceptable to the Commission.

As noted above, the complaint also alleged that in nine metropolitan areas, the terminaling of gasoline and other light petroleum products would become significantly more concentrated as a result of the merger, and that entry into those markets would be difficult.[65] The consent order required BP Amoco to divest the nine terminals to Williams Energy Ventures, Inc., ("Williams") -- a major energy company with substantial experience in operating terminals – or to another acquirer approved by the Commission.

In *Duke Energy Corporation/Phillips Petroleum Company, File No. 0010080* (consent order issued on May 5, 2000), the Commission issued a consent order resolving allegations in an accompanying complaint which arose in December 1999, when Phillips and Duke agreed to transfer their natural gas gathering and processing businesses to DEFS, and Duke agreed to acquire Conoco and Mitchell's jointly held Oklahoma gas gathering and processing assets. Gas gathering involves the pipeline transportation of natural gas from a wellhead or central delivery point to a gas transmission pipeline or processing plant. Following an investigation of the proposed transactions, the FTC determined that both the merger and the acquisition could lead to competitive concerns in several counties in Kansas, Oklahoma and Texas. The complaint alleged that there were seven relevant markets in which gas producers were limited in their choice of gas gathering services and could only turn to Phillips or Duke (or, at most, one other gatherer). To remedy these concerns, the consent order required Duke to divest a total of 2,787 miles of its pipeline systems in these markets, including 2,250 miles of pipeline which were to be divested to its joint venture partners. In February 2001, Duke divested its interest in 800 miles of pipeline in the Westana area of Oklahoma to Western, a co-owner of the Westana Gathering Company. Duke also agreed to divest its interest in 1,450 miles of pipe in the Austin Chalk area of Texas to Mitchell, a co-owner of Ferguson-Burleson County Gas Gathering System. The remaining 537 miles of pipeline will be sold to other Commission-approved buyers under the terms of the order.

In *El Paso Energy Corporation/Sonat, Inc., File No. 9910178* (consent order issued on January 6, 2000), the Commission issued a consent order resolving allegations in an accompanying complaint that the proposed merger would result in highly concentrated markets in several geographic areas, and would substantially reduce competition or tend to create a monopoly in the transportation of natural gas by eliminating both actual and potential competition between El Paso and Sonat. In addition, the complaint alleged that -- due to the cost of developing and placing natural gas pipelines -- entry into the marketplace by additional competitors would not be timely or sufficient to prevent the anticipated anticompetitive effects of the merger. To address complaint allegations regarding the potential for reduced competition offshore, the consent order required El Paso to divest Sea Robin -- a wholly-owned subsidiary of Sonat -- and to divest Sonat's one-third ownership interest in Destin (a large natural gas pipeline off the Louisiana coast). To address complaint allegations concerning Southeastern onshore consuming areas, the order required El Paso to divest ETNG, the El Paso pipeline system that serves customers in eastern Tennessee and northern Georgia. In addition, the order contains ancillary provisions related to both the onshore and offshore markets. In particular, customers on the ETNG system have transportation and/or storage contracts with ETNG and Tennessee Gas Pipeline Co. -- another El Paso subsidiary -- and many of these contracts have renewal election deadlines which will run in the midst of the ETNG divestiture process. The consent order therefore extended the renewal deadline for these contracts until 60 days after the divestiture of ETNG, so that customers will know the identity of the acquirer of ETNG before they commit to new contracts for natural gas transportation and storage. In addition, the order contains ancillary provisions which would apply to El Paso's operation of VKGC in the event that Sonat's Destin interest is sold to a natural gas producer.

In *El Paso Energy Corporation/Coastal Corporation, File No. 0010086* (consent order issued on March 19, 2001), the Commission issued a consent order which allowed the $16 billion merger of El Paso Energy Corporation ("El Paso") and the Coastal Corporation ("Coastal"), while addressing the competitive concerns identified regarding the transaction as originally proposed. The consent order required El Paso and Coastal to divest their interests in 11 natural gas pipeline systems totaling more than 2,500 miles of pipe, and also provided for the divestiture of the proposed Gulfstream pipeline in Florida to a new purchaser, in order to restore competition to pre-merger levels and ensure future competition for natural gas transportation into the state. The consent order also required the divestiture of El Paso and Coastal interests in existing natural gas pipelines serving customers in New York State and the Midwest. In addition, to address the complaint allegations of injury to competition in the Gulf of Mexico, the consent order required the divestiture of seven pipelines and established a development fund for the purchaser of El Paso's Green Canyon and Tarpon pipelines to cover the costs of extending these pipelines to specified areas in the Gulf where El Paso and Coastal pipelines are significant competitors.

In *El Paso Energy Corporation/Pacific Gas & Electric, File No. 0010121* (consent order issued on January 30, 2001), the complaint alleged that the proposed acquisition would lessen competition in each of the following markets: (1) the transportation of natural gas out of the Permian Basin (the large gas supply area located in western Texas and southeastern New Mexico); (2) the transportation of natural gas into Central Texas; and (3) the transportation of natural gas out of the Matagorda Island offshore production area (located in waters off of the Texas coast near Galveston). The complaint also alleged that the acquisition, if consummated, would result in highly concentrated markets and would allow El Paso to raise prices unilaterally. In addition, the complaint alleged that entry into any of the three markets would not be timely, likely or sufficient to prevent a price increase. To remedy these alleged anticompetitive effects, the consent order required the respondents to divest all of El Paso's share of Oasis Pipe Line Company to third party acquirers -- including Aquila Gas Pipeline Corporation, Dow Hydrocarbons and Resources, Inc. and the Oasis Pipe Line Company -- and to divest the Teco Pipeline to Duke Energy Field Services, LLC. The consent order also required the respondents to divest all of PG&E's pipeline assets in Matagorda to Panther Pipeline.

In *Dominion Resources, Inc./Consolidated Natural Gas Company, Docket No. C-3901* (consent order issued on December 9, 1999), the Commission's complaint alleged that the proposed merger would combine the dominant provider of electric power in Virginia (Dominion) with the primary distributor of natural gas in southeastern Virginia, Virginia Natural Resources

(VNG), a subsidiary of Consolidated (CNG). The complaint further alleged that entry into the electric power generation market in southeastern Virginia by companies unaffiliated with Dominion might be deterred or disadvantaged, because Dominion -- with the control of VNG which it would secure -- would as a result be able to exercise unilateral market power to raise the cost of entry and production or otherwise gain a competitive advantage. The complaint alleged that, for these and other reasons, the merger would increase the likelihood that consumers would have to pay higher prices for electricity. The consent order consequently required Dominion to divest VNG, in accordance with the stipulation entered into among Dominion, CNG, and the staff of the Virginia State Corporation Commission, and with any proposed acquirer to be subject to Commission approval. The consent order further provided that if Dominion could not find a suitable purchaser, it would have to spin off VNG to its shareholders, with the proviso that no Dominion shareholder could receive more than five percent of the voting shares of VNG.

In *Koch Industries, Inc./Entergy Corporation, Docket No. C-3998* (consent order issued on January 31, 2001), the Commission issued a consent order against Entergy Corporation ("Entergy") and Entergy-Koch, LP ("EKLP") -- a limited partnership owned equally by Entergy and Koch Industries, Inc. -- which allowed EKLP to acquire 50 percent of the Gulf South Pipeline Company, LP ("Gulf South," formerly the Koch Gateway Pipeline Company) from Koch. The consent order resolves allegations in an accompanying complaint that the transaction would substantially lessen competition or tend to create a monopoly -- in the retail sale of electricity to consumers (in certain Louisiana and Mississippi markets) and the distribution of natural gas to consumers (in certain Louisiana markets) -- in violation of Section 7 of the Clayton Act and Section 5 of the FTC Act. It requires Entergy, *inter alia*, to implement an open, transparent process -- for buying natural gas and natural gas transportation -- which will assist state regulators in determining whether Entergy, in any given instance, purchases gas supplies from EKLP at inflated prices.

In *Michigan Consolidated Gas Company/The Detroit Edison Company, Docket No. C-4008* (consent order issued on May 15, 2001), the complaint alleged that the proposed merger, if consummated, would violate the law, with respect to the distribution of electricity and natural gas: (1) by eliminating competition between DTE and MCN in the distribution of electricity and the distribution of natural gas in the City of Detroit and certain Michigan counties in which both DTE distributes electricity and MCN distributes natural gas (the "Overlap Area"); (2) by consequently increasing the likelihood that market power would be exercised in the Overlap Area in connection with the distribution of electricity and the distribution of natural gas; and (3) by consequently increasing the likelihood of anticompetitively higher prices and reduced competition for the distribution of electricity and the distribution of natural gas in the relevant market. The consent order the Commission issued permitted the merger to proceed, but required DTE/MCN to divest certain assets to Exelon no later than five days after it was consummated.[66] Exelon is one of the largest suppliers of electricity and natural gas in the nation, and it currently markets natural gas to buyers in Michigan (as well as in other states) and has an affiliate that is engaged in the distribution of microturbines and distributed generation equipment.

In *CMS Energy Corporation/Duke Energy Company, Docket No. C-3877* (consent order issued on June 2, 1999), the complaint alleged that the proposed acquisition of the Panhandle and Trunkline pipelines would give CMS/Consumers Energy ("CMS") -- the owner of the only

Michigan intra-state natural gas transmission system through which consumers can buy natural gas from other suppliers -- an incentive to restrict other pipelines' access to the Consumer Energy system, with the effect of permitting price increases on the Trunkline and Panhandle pipelines. The complaint alleged that these effects could in turn increase the price of natural gas and electricity for consumers and industrial users in all or portions of 54 Michigan counties. The Commission consent order prohibits CMS from restricting or eliminating interconnection capacity available to the pipelines that compete with Panhandle and Trunkline. It also requires CMS to give shippers the choice of two options if the interconnection capacity with competing pipelines falls below historical levels. First, if CMS cannot accept a shipment at the regular interconnect point -- but the shipper can provide its shipment at another point at no additional cost to the shipper -- the order requires CMS to accept the gas at the other pipeline interconnect point. If, by contrast, the shipper would incur additional cost -- or if no other interconnection point is available -- the order would require CMS to provide gas from its own supply (essentially loaning the gas) until the shipper can access the interconnect point and replace that gas. The consent order also requires CMS to post information about the capacity, shipments and throughput of the system on an electronic bulletin board.

Allegedly Anticompetitive Agreements

Horizontal agreements on pricing or output or other collusive conduct can lead to higher fuel prices for consumers than would result from competitive markets, and the Commission therefore carefully monitors competitive conditions in the petroleum sector, and as appropriate provides assistance to other law enforcement agencies. Thus, for example, in 2000 a number of State Attorneys General in the Northeast opened an investigation of heating oil and diesel fuel price increases in their jurisdictions, and the Commission provided substantial assistance and consultation to the Attorneys General and their staffs with respect to that investigation.

More recently, the Commission completed two investigations relating to the pricing of gasoline. The first was an extensive and intensive investigation into the causes of the gasoline price spikes which occurred in a number of local markets in the Midwest during the spring and summer of 2000. The Commission staff secured a great deal of evidentiary material in the course of the investigation, but ultimately the Commission did not find any credible evidence of collusion or other anticompetitive conduct by the oil industry, and therefore closed the investigation. In its final report on the investigation, the Commission identified the major cause of the price increases as a supply shortage which, in turn, arose from a number of different factors, including, in particular, refinery production problems, pipeline disruptions, and low inventory levels.

Second, the Commission conducted an intensive and extensive investigation of various marketing and distribution practices employed by the major oil refiners in Arizona, California, Nevada, Oregon, and Washington State. The Commission did not, however, find any evidence of conduct by the refiners which violated the federal antitrust laws, and therefore closed the investigation. In particular, the investigation addressed the practice of "zone pricing," pursuant to which refiners "set uniform wholesale prices and supply branded gasoline directly to their company-operated and leased stations and to some independent open dealer stations within a small but distinct geographic area called a price zone."[67] The investigation did not find any evidence of collusion between oil companies in furtherance of this practice.[68] The investigation also addressed the practice of "redlining," pursuant to which refiners prevent independent gasoline distributors ('jobbers") "from competing with them to supply branded gasoline to independent dealers in metropolitan areas."[69] The investigation "revealed no evidence of conspiracy or coordination" with respect to this practice.[70]

The Commission will continue to monitor carefully competitive conditions in the petroleum industry, given its importance to the United States economy and, more specifically, to consumers such as older Americans who are particularly vulnerable to increases in petroleum product prices. To that end, on August 2, 2001, the Commission held an initial public conference to examine factors that affect prices of refined petroleum products in the United States. The public conference was the first step in soliciting information from interested parties that will assist the Commission in structuring hearings later this year to focus in a comprehensive manner on the most relevant and important issues regarding petroleum prices. Participants in the initial conference focused on domestic and international aspects of the following areas: (1) the supply of crude oil, including crude oil exploration, production, importation, and transportation; (2) the refining of fuel products and the importation of refined products; (3) the transportation of refined petroleum products; and (4) the marketing and distribution of refined petroleum products.

Electric Utilities

The cost of electricity can be especially burdensome to older consumers because those on fixed incomes face greater relative economic burdens in meeting electricity costs. Moreover, retired individuals -- who tend to spend more time at home than working individuals -- may have less of an opportunity to lower their electricity requirements during the day. Furthermore, senior citizens -- because they are more susceptible to heat stress -- are often vulnerable to summertime temperatures in their homes which younger persons can tolerate, and often require uninterrupted air conditioning to maintain their health.

On September 13 and 14, 1999, as part of its Retail Electricity Competition Study, the Commission held a public workshop examining the competition and consumer protection issues involved with deregulating and restructuring the U.S. electricity industry. The purpose of the workshop was to allow idea-sharing on two topics which bear directly on the FTC's expertise: (1) market power (*e.g.*, evaluating and addressing horizontal market power concerns in electricity generation); and (2) consumer protection (*e.g.*, disclosures by electric service providers of the environmental attributes of the power they sell). The workshop provided a forum for discussing experiences under policies which have been implemented at the state level, rather than attempting to provide all of the answers to a complex set of issues that vary by region and locale. The Commission expects this type of robust exchange of views and ideas among those working on the issues to prove useful as the regulatory reform process moves forward, at both the state and the federal level.

Based in part on the September workshop, in July 2000, the Commission released a staff report entitled "Competition and Consumer Protection Perspectives on Electric Power Regulatory Reform." The report highlights how electric power restructuring is enabling consumers to select their own electricity supplier. The report concludes that consumers in electric power markets are likely to be better able to promote their interests when they can readily switch among suppliers offering a variety of products and services and when they can readily compare prices and terms of competing offers.

Retail Sector

Many older Americans, especially those on fixed incomes, may be particularly vulnerable to excessively high food prices. The Commission's antitrust enforcement activities during the January 1999-August 2001 period in this sector included law enforcement actions addressing a number of supermarket mergers and acquisitions.

Supermarket Mergers

In *Kroger Co./The John C. Groub Company, Inc., Docket No. C-3905* (consent order issued on Nov. 8, 1999), the consent order resolved allegations in an accompanying complaint that Kroger's proposed acquisition of The John C. Groub Company, Inc. would violate the law by substantially lessening supermarket competition in two markets in Indiana. In particular, the complaint alleged that two Kroger supermarkets directly competed with four Groub stores in Columbus, Indiana, and Madison, Indiana; that in those markets the proposed acquisition would therefore increase concentration and consequently reduce competition; and that the proposed acquisitions therefore could produce price increases and reductions in the quality and selection of food, groceries, or services. The consent order permitted the proposed acquisition, but required Kroger, *inter alia*, to divest three supermarkets in the two markets -- one Groub "Jay C" store and one Groub "Foods Plus" store in Columbus, Indiana, and one "Kroger" store in Madison, Indiana -- to Roundy's. In addition, the consent order for ten years requires Kroger to provide notice to the Commission before acquiring any supermarket assets in Bartholomew or Jefferson Counties, Indiana.

In *Etablissements Delhaize Freres et Cie "Le Lion" S.A./Hannaford Bros. Co., Docket No. C-3962* (consent order issued on May 30, 2001), the complaint alleged that the merger of Delhaize and Hannaford would violate the law by eliminating direct competition between supermarkets owned or controlled by Delhaize and those owned by Hannaford in certain geographic markets; by increasing the likelihood that Delhaize would exercise unilateral market power and raise prices for consumers within those markets; and by increasing the possibility of coordinated interaction between the remaining supermarket firms in the Southeast. The consent order required Delhaize to divest 37 supermarkets in Virginia and North Carolina to three FTC-approved buyers -- including Kroger Co. (20 stores in Virginia), Lowe's Food Stores, Inc. (12 stores in North Carolina), and the Sylvester Group (five stores in North Carolina) -- and to divest one unbuilt supermarket site in North Carolina.

In *Winn-Dixie Stores, Inc./Jitney-Jungle Stores of America, Inc., File No. 0110022* (consent order issued on February 14, 2001), the complaint alleged that Winn-Dixie's proposed acquisition of various supermarket assets of Jitney-Jungle would violate Section 5 of the FTC Act and Section 7 of the Clayton Act by eliminating direct competition between supermarkets currently owned or operated by Jitney-Jungle and those owned or operated by Winn-Dixie in several geographic markets in Florida and Mississippi; by increasing the likelihood that Winn-Dixie would unilaterally exercise market power within those markets; and by increasing the likelihood of collusion or coordinated interaction among the remaining supermarket firms in these markets. The complaint further alleged that each of these effects would increase the likelihood that prices for food, groceries or services would increase -- and that the selection of these items would decrease -- in the relevant geographic markets. The consent order settling these allegations, *inter alia*, for ten years prohibits Winn-Dixie from acquiring any interest in four specified Jitney-Jungle supermarkets without obtaining prior FTC approval, and for ten years requires Winn-Dixie to provide written notice to the Commission before acquiring any interest in a supermarket owner or operator, or any facility that has operated as a supermarket within the previous six months in the relevant geographic markets.

In *Koninklijke Ahold nv/Giant Food, Inc., Docket No. C-3861* (consent order issued on April 5, 1999), the complaint alleged that Ahold's proposed acquisition of Giant would violate the law by eliminating direct competition between Ahold and Giant in four Maryland markets and three Pennsylvania markets; by eliminating actual potential competition in another Pennsylvania market; by increasing the likelihood that Ahold would unilaterally exercise market power; and by increasing the likelihood of collusion among the remaining supermarket firms. The complaint alleged that each of these effects would increase the likelihood that the prices of food, groceries or services would increase -- and that the quality and selection of food, groceries or services would decline -- in these markets. The consent order permitted the proposed acquisition, but required Ahold, *inter alia*, to divest ten supermarkets in eight separate geographic markets, and to provide the Commission with prior notice of plans to acquire additional supermarkets within those markets.

In *Kroger Co./Fred Meyer Stores, File No. 9910024* (consent order issued on January 10, 2000), the complaint alleged that Kroger's proposed acquisition of Fred Meyer would increase concentration and as a result reduce competition in seven western U.S. markets -- in Arizona, Wyoming, and Utah -- with consequent price increases and reductions in the quality and selection of food, groceries or services in those markets. The consent order permitted the proposed acquisition, but required Kroger to divest eight specific supermarkets in the seven markets; the required divestitures included either all of the Kroger stores or all of the Fred Meyer supermarkets in each market. The consent order also requires Kroger to provide the Commission with prior notice of plans to acquire additional supermarkets in six of the markets.

In *Albertson's Inc./American Stores Company, File No. 9810339* (consent order issued on December 6, 2000), the complaint alleged that Albertson's proposed acquisition of American Stores by Albertson's raised competitive issues in 57 markets in California, Nevada and New Mexico. These 57 markets contained a large percentage of stores owned by Albertson's and American Stores. Over half of the parties' supermarkets in California, New Mexico and Nevada were direct competitors. The complaint alleged that each of the local markets at issue would have been highly concentrated after this merger, as defined by the Commission's Merger Guidelines. The FTC's complaint alleged that by eliminating direct competition and actual potential competition in the relevant markets, Albertson's proposed acquisition of American Stores could result in price increases and reductions in the quality and selection of food, groceries or services. The complaint outlining the charges alleges that entry in these markets is difficult and would not be timely, likely, or sufficient to prevent anticompetitive effects. The consent order was designed to remedy the Commission's concerns by requiring the divestiture of 144 supermarkets and five supermarket sites in the relevant markets to five different buyers. The companies were required to divest 104 Albertson's supermarkets and three Albertson's sites, and 40 American Stores' supermarkets and two American Stores' sites. The 104 Albertson's supermarkets consist of 96 stores that operate under the "Albertson's" trade name and eight stores that operate under the "Max Grocery Warehouse" trade name. The 40 American Stores supermarkets consist of 36 stores that operate under the "Lucky" trade name, three stores that operate under the "SuperSaver" trade name, and one store that operates under the "Lucky Sav-On" trade name.

In *Shaw's Supermarkets, Inc./Star Markets, Inc., File No. 9910075* (consent order issued on April 5, 2000), the complaint alleged that the effect of this acquisition, if consummated, would be to substantially lessen competition in the relevant markets by eliminating direct competition between Shaw's and Star Markets and increase the likelihood of or facilitate collusion or coordinated action, with the effects of increasing prices and reducing the quality and selection of food, groceries or services. The consent order resolved these antitrust concerns by requiring the divestiture of 10 designated Shaw's or Star Markets supermarkets in eight communities. The remaining three stores, Star's Saugus, Stowe, and Sudbury stores, were to be divested within three months after the date the consent agreement was signed.

Funeral Homes and Cemeteries Sector

Funeral services, which often cost $10,000 or more, come at emotionally difficult times and may be among the most expensive of consumer purchases and are of considerable importance to older Americans and their families. The Commission is active on the antitrust side of its jurisdiction in ensuring that competition is maintained in funeral services and cemetery services. Where mergers take place between two chains providing such services, we examine them for overlaps in particular local markets, in order to ensure that every local market retains enough providers to give consumers a competitive range of alternatives.

In *Service Corporation International/La Grone Funeral Home, Docket No. C-3959* (consent order issued on June 29, 2000), Service Corporation International ("SCI") owned the Ballard Funeral Home -- a full-service funeral home in Roswell, New Mexico -- and in May 1994 acquired the LaGrone Funeral home, the only remaining full-service funeral home in Roswell. The complaint alleged that the acquisition gave SCI a monopoly in the provision of funeral services in Roswell, and that after the acquisition there had been no new entry into the provision of funeral services in Roswell and prices for funeral services had increased. Accordingly, the consent order required SCI to divest the Ballard Funeral Home to a Commission-approved buyer, and for a 10-year period to provide the Commission with prior notice of any proposed acquisition of a funeral home serving the Roswell area.

In *Service Corporation International/Equity Corporation International, Docket No. C-3869* (consent order issued on April 22, 1999), the consent order settled allegations in an accompanying administrative complaint that SCI's proposed acquisition of Equity Corporation International (ECI) -- the fourth largest funeral home and cemetery company in the United States -- would substantially lessen competition among funeral home or cemetery establishments in 14 local markets. The complaint alleged in particular that the proposed acquisition -- which would combine SCI's approximately 3,200 funeral homes and 400 cemeteries in 41 states, Canada, Australia and Great Britain with ECI's 354 funeral homes and cemeteries in 33 states -- would have eliminated substantial existing competition between SCI and ECI, and would have led to higher prices or reduced services to consumers. The consent order permitted SCI to acquire ECI, but required the respondent to divest sufficient funeral service and cemetery properties to Carriage Services, Inc. in each of the 14 relevant markets to remedy the allegedly anticompetitive effects of the acquisition.

CONCLUSION

This report summarizes Commission programs from January 1999 through August 2001 which may be of particular interest or usefulness to older Americans. Through its law enforcement and consumer and business education efforts, the Commission strives to provide a fair and competitive marketplace where older consumers, and their younger counterparts, can make decisions and choose their purchases from a competitive range of options and on the basis of complete and truthful information.

ENDNOTES

1.The FTC has limited or no jurisdiction over some specified types of entities and activities that are regulated by other parts of the government. These include banks, savings associations, and federal credit unions; regulated common carriers; air carriers; non-retail sales of livestock and meat products under the Packers and Stockyards Act; certain activities of nonprofit corporations; and the business of insurance. *See, e.g.*, 15 U.S.C. §§ 44-46 (FTC Act); 15 U.S.C. § 21 (Clayton Act); 7 U.S.C. § 227 (Packers and Stockyards Act); 15 U.S.C. § 1011-1015 (McCarran-Ferguson Act).

2.15 U.S.C. § 45(a). The Commission also has responsibilities under 46 additional statutes, including, for example, the Fair Credit Reporting Act, 15 U.S.C. § 1681 *et seq.*, which establishes important privacy protections for consumers' sensitive financial information; the Truth in Lending Act, 15 U.S.C. §§ 1601 *et seq.*, which mandates disclosures of credit terms; and the Fair Credit Billing Act, 15 U.S.C. §§ 1666 *et. seq.*, which provides for the correction of billing errors on credit accounts. The Commission also enforces more than 35 Rules governing specific industries and practices, including, for example, the Used Car Rule, 16 C.F.R. Part 455, which requires used car dealers to disclose warranty terms via a window sticker; the Franchise Rule, 16 C.F.R. Part 436, which requires the provision of information to prospective franchisees; and the Telemarketing Sales Rule, 16 C.F.R. Part 310, which defines and prohibits deceptive telemarketing practices and other abusive telemarketing practices.

3.In addition, pursuant to its liaison agreement with the FTC, the FDA exercises primary jurisdiction over the advertising and labeling of prescription drugs.

4.Lane Labs manufactured and distributed these products, while Cartilage Consultants, Inc. supplied consumers with information on how to use the products, purportedly to treat cancer.

5.The complaint also alleged that the defendants collected consumers' medical and financial data with allegedly false assurances as to the security and encryption used to protect consumers' information, and in addition sent "spam" to 11,000 customers informing them that their credit cards would be billed $50 for "Y2K Remediation." Consequently, the consent decree also prohibits the defendants from "selling, renting, leasing, transferring or disclosing the personal information that was collected from their customers without express authorization from the customer;" requires them to post a privacy policy that discloses the types of personal identifying information they are collecting, either actively or passively; and requires them to establish and maintain reasonable procedures to protect the confidentiality, security, and integrity of personal information collected from consumers.

6.Subprime lending refers to the extension of high-rate, high-fee loans to persons who are considered to be higher-risk borrowers.

7.The Commission's ECOA and FDCPA claims are discussed more fully below, in the sections describing those statutes.

8.16 C.F.R. Part 305 (2001). The FTC issued the Rule in 1979, pursuant to a directive in Section 324 of the Energy Policy and Conservation Act of 1975 ("EPCA"), 42 U.S.C. § 6294. *See* 44 Fed. Reg.

66466 (Nov. 19, 1979).

9.Manufacturers must derive this information from standardized tests which the EPCA directs the Department of Energy ("DOE") to develop. *See* 42 U.S.C. § 6293. The Commission's Rule must require disclosure on labels of energy use information derived from the DOE test procedures. *See* 42 U.S.C. § 6294(c)(1)(A)).

10.The survey also indicated that consumers aged 50 and older accounted for about 36 percent of prize/sweepstakes fraud.

11.*See* www.consumer.gov/sentinel. This system is an expansion of the earlier NAAG-FTC Telemarketing Complaint System.

12.For instance, Consumer Sentinel allows members to submit an "Auto Query" search on scams or possible targets, which allows them to get an e-mail notice whenever responsive new complaints are entered in the database.

13.These agencies include the FBI, the Offices of the United States Attorneys, and other parts of the Department of Justice; the United States Postal Inspection Service; the Secret Service; the Securities and Exchange Commission; the Commodity Futures Trading Commission; and the Internal Revenue Service. They also include the offices of all fifty State Attorneys General; local district attorneys and sheriffs; and Canadian authorities such as the Royal Canadian Mounted Police, the Competition Bureau, Industry Canada, and a number of Provincial and city police departments.

14.Consumer Sentinel also gives members the ability to search the National Tape Library -- a clearinghouse of undercover tape recordings of telemarketing sales calls -- and to make a tape request online; in addition, it provides an Internet resource bookmark list, a library of telemarketing pleadings, newsletters, and other information useful to law enforcers.

15.http://www.consumer.gov/sentinel.

16.The CRC now receives more than 12,000 inquiries and complaints per week. They cover a broad spectrum, including everything from complaints about get-rich-quick telemarketing scams and online auction fraud to questions about consumer rights under various credit statutes and requests for educational materials. Counselors record complaint data, provide information to assist consumers in resolving their complaints, and answer their inquiries.

17.In 1998, the Interagency Resources Management Conference Award recognized Consumer Sentinel as an exceptional initiative to improve government service.

18.The FTC and 12 partners from other countries launched econsumer.gov at the last meeting of the International Marketing Supervision Network (IMSN) on April 24, 2001. The IMSN is a membership organization consisting of the consumer protection authorities of 29 countries, and representatives from the European Commission and the Organisation for Economic Cooperation and Development (OECD). Most IMSN member countries are OECD members. The main objective of the IMSN is to facilitate practical action to prevent and redress deceptive marketing practices with an international component. The IMSN fosters cooperative efforts to tackle consumer problems connected with cross-border transactions in both goods and services. It facilitates the exchange of information among the participants for mutual benefit and understanding.

The other participating IMSN countries are Australia (Australian Competition and Consumer Protection Commission), Canada (Competition Bureau, Industry Canada), Denmark (Danish Consumer Ombudsman), Finland (Finnish Consumer Ombudsman), Hungary (Hungarian General Inspectorate for Consumer Protection), Korea (Korea Consumer Protection Board), Mexico (Procuraduria Federal del Consumidor), New Zealand (New Zealand Ministry for Consumer Affairs), Norway (Norwegian Consumer Ombudsman), Sweden (Swedish Consumer Ombudsman), Switzerland (State Secretariat for Economic Affairs of Switzerland), and the United Kingdom (Office of Fair Trading).

19.The online complaint form accommodates international address information and foreign currencies.

20.15 U.S.C. § 6101.

21.16 C.F.R. 310 (2001).

22.Although the Commission actively pursues every avenue to collect as much of the judgments it secures as possible, for a variety of reasons -- including in particular the insolvency of the defendants involved -- it is not always possible to do so.

23.16 C.F.R. Section 310.3(a)(1)(iv) (2001).

24.Commission records indicate that some consumers have lost as much as tens of thousands of dollars to prize promotion telemarketers.

25.As part of Project Prize Fighter, the FTC filed 3 actions, the U.S. Postal Service filed 10 actions, Attorneys General from Ohio, North Carolina, Florida, Missouri and Utah initiated 9 actions, and 2 additional actions were taken by the County of Orange Boiler Room Apprehension (COBRA) Task Force and the Los Angeles County Sheriff's Department.

26.16 C.F.R. § 310.4(a)(4) (2001).

27.The Commission had conducted two previous sweeps of similar cases in 1996 and 1997.

28.In the three other cases, the complaints similarly alleged that the defendants provided consumers who paid fees ranging from $28 to $159 nothing more than information on how to improve their credit ratings; lists of banks that marketed secured credit cards; bundles of worthless coupons; basically worthless “100 percent guarantee” certificates; and/or groups of credit card applications. *See FTC v. 1263523 Ontario, Inc., doing business as Consumer Credit Services, Donald M. Davies, et al*.; *FTC v. Modern Credit Financial Services, Inc., et al*.; and *FTC v. Credit National, Inc. and Mark Wolf, doing business as Credit America.*

29.In the other cases, the complaints similarly alleged that the defendants provided consumers who paid fees ranging from $45 to $89 nothing more than materials on credit management; a basically worthless “100 percent guarantee” certificate; and/or information about banks that were supposed to issue the promised credit cards. *See, e.g., FTC v. First Credit Alliance, Inc.; FTC v. Navestar DM, Inc.*

30.*See* Section 133 of the TILA, 15 U.S.C. § 1643; Section 226.12(b) of Regulation Z, 12 C.F.R. § 226.12(b) (2001).

31.The Commission filed a similar set of complaints filed against credit card protection fraud artists in 1999.

32.Similarly, in *FTC v. Liberty Direct, Civ. Action No. CV-99-1637-PHX-RCB* (D. Ariz. Announced May 7, 2001), the Commission filed a Section 13(b) complaint alleging that Liberty Direct sold credit card loss "protection" services through third-party telemarketers from January 1998 until February 1999. During this time, the company used telemarketing scripts to promote its service, typically priced at $199, by falsely representing to consumers that the defendants were affiliated with the consumers' credit card issuer; that consumers would be held liable for *all* unauthorized charges made against their accounts; and that consumers owed money to the defendants. The final order bans the defendants from participating in or benefitting from a business that sells credit card loss protection services; required them to post a $1 million bond before engaging in telemarketing; and prohibited a number of misrepresentations, including misrepresentations that the defendants are affiliated with consumers' credit card issuers or third parties; that consumers can be held liable for unauthorized credit card charges over $50; or that consumers have purchased goods or services from the defendants.

The FTC has also filed several cases against fraudulent enterprises operating in Canada, each involving credit card loss protection scams. These matters are also ongoing. *See, e.g., FTC v. 1306506 Ontario Ltd*, note 26 above.

33.A large percentage of these cross-border complaints are contributed to Consumer Sentinel by Canada's Project Phonebusters.

34.Dollars paid are equated with dollar loss, given that consumers receive products or services of either no or minimal value from the types of schemes involved.

35.15 U.S.C. § 45(a)(2).

36.15 U.S.C. § 44.

37.15 U.S.C. § 6105(b).

38.*See, e.g., FTC v. Growth Plus Int'l Marketing, Inc.,* No. 00C-7886 (N.D. Ill. filed December 18, 2000); *FTC v. 9013-0980 Quebec Inc.*, Civ. No. 1:96CV-1567 (N.D. Ohio filed July 18, 1996); *and FTC v. Ideal Credit Referral Services Ltd.,* C96-0874R (W.D. Wash. filed June 5, 1996).

39.16 C.F.R. § 310.3(b) (2001).

40.The British Columbia Attorney General has filed a parallel action in the *Canada Prepaid* matter, and the FTC, the Department of Justice's Office of Foreign Litigation, and the receiver in the FTC's case have jointly filed a civil common law fraud action in British Columbia against the defendants seeking the return of assets to the U.S. on behalf of defrauded U.S. consumers. At about the same time, the U.S. Attorney's Office in Los Angeles obtained an indictment against the central figure behind the telemarketing network. That person was arrested in Vancouver and now faces extradition to the United States.

41.Pew Internet and American Life Project, *More Online, Doing More* (reported at http://www.pewinternet.org/reports/toc.asp?Report=30) (comparison of tracking survey data in May and June with data from Thanksgiving and Christmas indicates that the number of American adults with Internet access grew from about 88 million to more than 104 million in the second half of 2000).

42.Reported at www.census.gov/mrts/www/current.html.

43.*Id.*

44.By contrast, only 29 percent of people over 50 owned computers in 1996. *See The Greying of the Internet*, a report published by Charles Schwab & Co., Inc., and SeniorNet .org., reported at http://www.headcount.com/globalsource/profile/index.htm.

45.The Commission initiated Consumer Sentinel in 1997, and the fact that the system both made consumers more aware that they could register their complaints with the Commission and made it easier for them to do so probably provides a partial explanation for the increase in Internet fraud complaints described in the text.

46.To date the Commission has collected more than $55 million in redress for victims of Internet fraud and deception.

47.These figures are based on estimated annual fraudulent sales by defendants in the twelve months prior to filing the complaint. Fraudulent sales figures are based on, among other things, financial statements, company records, receiver reports, and deposition testimony of company officials.

48.The other federal agencies included the Commodity Futures Trading Commission, the Department of Justice, the Securities and Exchange Commission, and the United States Postal Inspection Service.

49.Governmental participants included consumer protection agencies from Australia, Canada, Finland, Germany, Ireland, New Zealand, Norway, the United Kingdom and the United States.

50.The Attorneys General of Arizona, Colorado, Florida, Illinois, Iowa, Indiana, Louisiana, Maryland, Massachusetts, Michigan, Missouri, Nevada, New Jersey, North Carolina, Ohio, Oregon, Pennsylvania, Tennessee, Texas, and Washington all filed one or more lawsuits. Consumer protection offices in West Virginia and Wisconsin also took action, as did the Louisiana Department of Justice, the Oklahoma Department of Securities, and the Washington State Securities Division.

51.Telephone/Pay-Per-Call Solicitation Frauds are schemes that exploit the telephone billing and collection system to charge consumers for telephone-based entertainment programs ("audiotext" in industry parlance) or other so-called "enhanced services" that are not telecommunications transmission but are often billed on consumers' telephone bills. Modem dialers and videotext schemes, like the operation attacked in *FTC v. Verity International*, No.00 Civ. 7422(LAK) (S.D.N.Y. 2000), described *infra*, are ones that, unbeknownst to a consumer, cause his or her computer modem to disconnect from his or her usual Internet service provider, dial an expensive international telephone number, and reconnect to the Internet at a remote location overseas, charging the consumer as much as $5.00 or more per minute for as long as the consumer remains online.

52.Pyramid operators typically promise enormous earnings or investment returns, based not on commissions for retail sales to consumers, but rather on commissions for recruiting new pyramid members. Recruitment commissions, of course, are premised on an endless supply of new members. Inevitably, when no more new recruits can be found, these schemes collapse and a vast majority of participants lose the money they invested.

53.To date, the Commission has collected about $42.6 million in these cases.

54.*FTC v. Five Star Auto Club, Inc.*, 97 F. Supp. 2d 502 (S.D.N.Y. 2000).

55.Identity theft is use by a thief, unbeknownst to his victim, of the victim's name, social security number or other personal identifying information, to open accounts and rack up huge debts for goods and services. Identity theft certainly predates the Internet, and although identity thieves are finding ways to exploit this new tool, often this pernicious practice utilizes low technology means, such as intercepting a victim's mail, or scavenging personal information from a victim's trash.

56.The Commission has been working closely with other agencies to establish a coordinated effort to enhance law enforcement efforts and to help consumers resolve identity theft problems. Thus, in April 1999, Commission representatives met with representatives of approximately a dozen other federal agencies and the National Association of Attorneys General to discuss the implementation of the consumer assistance provisions of the Identity Theft Act. As a part of the resultant cooperative efforts, the FTC staff work with the Identity Theft Subcommittee of the Attorney General's Council on White Collar Crime to coordinate law enforcement strategies and initiatives. FTC staff also incorporate into the Clearinghouse database Social Security number misuse complaints -- a leading source of identity theft problems -- received by the fraud hotline of the Social Security Administration's Inspector General's Office.

57.*FTC v. Jeremy Martinez d/b/a Info World*, No. 00 Civ 12701 (C.D. Cal. Dec. 5, 2000). *See also FTC v. J.K. Publications, Inc., et al,* 99 F. Supp.2d. 1176 (C.D. Cal. Apr. 10, 2000)(granting summary judgment for the FTC in case alleging that defendants obtained consumers' credit card numbers without their knowledge and billed consumers' accounts for unordered or fictitious Internet services), later proceedings in *FTC v. J.K. Publications, Inc., et al,* 99 Civ 00044 (C.D. Cal. Aug. 30, 2000)(final order awarding $37.5 million in redress); *FTC v. Rapp,* No. 99-WM-783 (D. Colo. filed Apr. 21, 1999) (alleging that defendants obtained private financial information under false pretenses)(Stipulated Consent Agreement and Final Order entered June 23, 2000).

58.Info World offered templates for California, Georgia, Florida, Maine, Nevada, New Hampshire, New Jersey, Utah, Wisconsin and New York drivers licenses.

59.The FTC has coordinated or co-sponsored the following Surf Days, listed by the dates of their announcements, since the beginning of 1999: Jewelry Guides Surf (January 1999), Pyramid Surf Day II (March 1999), Green Guide Surf (April 1999), Coupon Fraud II Surf Day (June 1999), Jewelry Guides Surf II (January 2000), Scholarship Services Surf (January 2000), GetRichQuick.con Surf (March 2000), False or Unsubstantiated Lice Treatment Claims Surf (April 2000), Credit Repair Surf II (August 2000), Childrens' Online Privacy Protection Act Compliance Surf (August 2000), False Claims of Authenticity for American Indian Arts and Crafts Surf Day (October 2000), TooLate.Com [Surf of Online Retailers' Compliance with the Mail or Telephone Order Merchandise Rule] (November 2000), and Operation Detect Pretext [Surf of more than 1,000 web sites (coupled with a review of more than 500 advertisements in the print media) for firms offering to conduct financial searches, in order to identify potential violators of the Gramm-Leach-Bliley Act, which specifically prohibits obtaining, or attempting to obtain, another person's financial information by making false, fictitious or fraudulent statements to financial institutions].

60.*See* http://www.ftc.gov/ftc/consumer.htm.

61.The original *consumer.gov* team received an Executive Branch award for federal employees who have made significant contributions to reinventing government.

62.The assets to be transferred to Chiroscience consisted principally of intellectual property and know-how, and included all of the applicable patents, trademarks, copyrights, technical information, and market research relating to levobupivacaine.

63.In 1999 the Texas legislature enacted a statue that permits the Texas Attorney General to approve, under certain conditions, joint negotiations between health plans and groups of competing physicians. Because it is unclear whether the IPA's conduct in this matter would be approved by the Texas Attorney General, the order allows the IPA to engage in future conduct that is approved and supervised by the State of Texas, if that conduct is protected from liability under the federal antitrust laws under the "state action" doctrine.

64.The Alaska North Slope is a major oil-producing region of the United States. ANS crude oil is used to supply refineries in Alaska, Hawaii, the West Coast of the United States, and Asia.

65.Petroleum terminals provide temporary storage of gasoline and other petroleum products received from a pipeline or marine vessel, and the redelivery of such products from the terminal's storage tanks into tank trucks for ultimate delivery to retail gasoline stations or other buyers. There are no substitutes for petroleum terminals for providing terminaling services.

66.The Divestiture Agreement consists of two separate agreements: (1) an "Easement Agreement" entered into between MichCon and Exelon and (2) an "Auditor Agreement" entered into between MichCon, Exelon, and a third party that serves an oversight function with respect to the Easement Agreement between MichCon and Exelon.

67.Statement of Commissioner Anthony, Commissioner Swindle, and Commissioner Leary (May 7, 2001).

68.*Id.*

69.*Id.*

70.*Id.*

APPENDIX I
COMMISSION OUTREACH TARGETING SENIORS THROUGH ITS REGIONAL OFFICES OCTOBER 2000-AUGUST 2001

Throughout Fiscal Year 2001, the Commission's Regional Offices -- in conjunction with other law enforcement agencies, AARP, Better Business Bureaus, social service agencies, media, and business and consumer groups -- have conducted a comprehensive initiative to help educate and empower senior citizens to protect themselves from fraudulent operators. In furtherance of this initiative, the Regional Offices hosted or participated in the following media events and outreach programs, conferences, and educational forums from October 2000 through August 2001:

1. Better Business Bureau "Scam Jam" (Decatur, AL)
   Office: Southeast Region
   Topic: Identity Theft, Door to Door Sales, Credit Fraud
   Date: October 13, 2000

2. Bay Area Senior Services
   Office: Western Region - San Francisco
   Topic: Telemarketing Fraud/Funeral Rule
   Date: October 13, 2000

3. North of Market Senior Services
   Office: Western Region - San Francisco
   Topic: Telemarketing Fraud/Slave Redress
   Date: October 21, 2000

4. Better Business Bureau "Scam Jam" (Florence, AL)
   Office: Southeast Region
   Topic: Identity Theft, Door to Door Sales, Credit Fraud
   Date: October 27, 2000

5. Fort Worth Senior Fraud Conference
   Office: Southwest Region
   Topic: Internet Fraud and Telemarketing Fraud
   Date: October 28, 2000

6. Institute for Puerto Rican and Hispanic Elderly at Manhattan Community College
   Office: Northeast Region
   Topic: Financial fraud
   Date: October 2000

7. Massachusetts Health Data Consortium Conference (Boston, MA)
Office: Northeast Region
Topic: Competition and consumer issues relating to the cost of prescription drugs
Date: October 2000

8. Middle Tennessee Better Business Bureau "Scam Jam" (Fayetteville, TN and Nashville, TN)
Office: Southeast Region
Topic: Internet Fraud, Telemarketing Fraud, and Identity Theft
Date: November 1-3, 2000

9. Consumer University (Atlanta, GA)
Office: Southeast Region
Topic: Internet Fraud and Telemarketing Fraud
Date: November 2, 2000

10. On Lok Senior Health Center
Office: Western Region - San Francisco
Topic: Funeral Rule/Door to Door Sales
Date: November 3, 2000

11. Senior University - Senior Citizens' Services (Macon, GA)
Office: Southeast Region
Topic: Internet Fraud and Telemarketing Fraud
Date: November 8, 2000

12. On Lok Senior Health Center
Office: Western Region - San Francisco
Topic: Telemarketing Fraud/Funeral Rule
Date: November 9, 2000

13. New Hope Missionary Church Seniors Group
Office: Western Region - San Francisco
Topic: Slave Redress/Funeral Rule
Date: November 11, 2000

14. AARP Metropolitan Dallas Legislative Council (Dallas, TX)
Office: Southwest Region
Topic: Fraud against the Elderly
Date: November 11, 2000

15. Harlem Consumer University with AARP (New York, NY)
Office: Northeast Region

Topic: Fraud Prevention for urban consumers/communities of color
Date: November 15, 2000

16. On Lok Senior Health Center
Office: Western Region - San Francisco
Topic: Consumer Protection Issues
Date: November 20, 2000

17. Mt. Zion Greater Baptist Church Seniors Group
Office: Western Region - San Francisco
Topic: Slave Redress/Funeral Rule/Telemarketing
Date: November 26, 2000

18. On Lok Senior Health Center
Office: Western Region - San Francisco
Topic: Funeral Rule/Telemarketing
Date: December 1, 2000

19. Bay View Hunter's Point Senior Citizens
Office: Western Region - San Francisco
Topic: Slave Redress/Internet Shopping
Date: December 2, 2000

20. On Lok Senior Health Center
Office: Western Region - San Francisco
Topic: Internet Fraud
Date: December 6, 2000

21. Jerusalem Church of God In Christ Senior Group
Office: Western Region - San Francisco
Topic: Telemarketing/Slave Redress
Date: December 12, 2000

22. WHDH–Channel 7 (NBC Affiliate--Boston, MA)
Office: Northeast Region
Topic: Advance Fee Loan Scams/Foreign Lottery Tickets
Date: January 8, 2001 (aired in February 2001)

23. Third Baptist Church Seniors Group
Office: Western Region - San Francisco
Topic: Slave Redress
Date: January 10, 2001

24. Allen Temple Baptist Church
    Office: Western Region - San Francisco
    Topic: Slave Redress/Funeral Rule
    Date: February 4, 2001

25. National Consumer Week Consumer Protection Fair (Chicago, IL)
    Office: Midwest Region
    Topic: Consumer Protection Issues - Abusive Lending Practices
    Date: February 6, 2001

26. AARP Conference on Abusive Lending Practices (New York, NY)
    Office: Northeast Region
    Topic: Training Conference on Abusive Lending Practices for AARP Staff and Volunteers
    Date: February 7, 2001

27. On Lok Senior Health Center
    Office: Western Region - San Francisco
    Topic: How not to be victim
    Date: February 17, 2001

28. National Consumer Week -- Consumer Information Fair
    Office: Western Region – LA
    Topic: Consumer Protection Issues
    Date: February 2001

29. Mt. Zion Greater Baptist Church Seniors Group
    Office: Western Region - San Francisco
    Topic: Consumer Protection Issues
    Date: March 14, 2001

30. Jerusalem Church of God In Christ Seniors Group
    Office: Western Region - San Francisco
    Topic: Slave Redress/Telemarketing Fraud
    Date: March 18, 2001

31. AARP Nassau County President's Council (Long Island, NY)
    Office: Northeast Region
    Topic: FTC's Missions & Policies
    Date: March 23, 2001

32. Senior consumer meeting sponsored by credit union (Seattle, WA)
Office: Northwest Region (with WA AG Office)
Topic: ID Theft/Internet fraud
Date: March 2001

33. Abusive Lending Practices Forum with AARP (New York, NY)
Office: Northeast Region
Topic: Abusive Lending Practices
Date: April 3, 2001

34. California Association of Retired Teachers
Office: Western Region - San Francisco
Topic: Consumer Protection Issues
Date: April 6, 2001

35. Third Baptist Church Seniors Group
Office: Western Region - San Francisco
Topic: Funeral Rule/Door to Door Sales
Date: April 11, 2001

36. The Flim-Flam Show - Series of Town Hall Meetings sponsored by SAF-T (Seniors Against Fraud Texas) (Tyler, TX)
Office: Southwest Region
Topic: Telemarketing Fraud Prevention
Date: April 17-18, 2001

37. "Operation No Profit-No Return" Reverse Boiler Room
Office: Southwest Region
Topic: Investment Fraud Prevention
Date: April 17-18, 2001

38. Macedonia Baptist Church
Office: Western Region - San Francisco
Topic: Slave Redress/Funeral Rule
Date: April 22, 2001

39. Abusive Lending Practices Forum with AARP (Rochester, NY)
Office: Northeast Region
Topic: Abusive Lending Practices
Date: April 2001

40. East Bay Forum on Fraud
Office: Western Region - San Francisco
Topic: Telemarketing/ID Theft/Funeral Rule
Date: May 4, 2001

41. Better Business Bureau "Scam Jam" (San Diego)
Office: Western Region - Los Angeles
Topic: Telemarketing/ID Theft/Shopping By Mail & Phone
Date: May 5, 2001

42. Senior Action Fair - Martin Luther King, Jr./Drew Medical Center (LA)
Office: Western Region - Los Angeles
Topic: Telemarketing Fraud
Date: May 7, 2001

42A. Senior consumer meeting sponsored by credit union (Yakima, WA)
Office: Northwest Region (with WA AG Office)
Topic: ID Theft/Internet fraud
Date: May 2001

42. Georgia Elderly Legal Assistance Program Conference (Atlanta, GA)
Office: Southeast Region
Topic: FTC's Funeral Rule
Date: May 9, 2001

43. Better Business Bureau "Scam Jam II" (Huntsville, AL)
Office: Southeast Region
Topic: Identity Theft, Door to Door Sales, Credit Fraud
Date: May 10-11, 2001

44. Better Business Bureau "Scam Jam" (Seattle, WA)
Office: Northwest Region
Topic: Consumer Fraud
Date: May 10-11, 2001

45. Better Business Bureau Senior Citizen's Fair (Chicago, IL)
Office: Midwest Region
Topic: Consumer Fraud
Date: May 14, 2001

46. Chicago Dept. on Aging Senior Citizen's Community Conferences (Chicago, IL)
Office: Midwest Region
Topic: Consumer Fraud
Date: May 15, 23 & 25, 2001

47. 28th Annual Meeting of Elder Services of Cape Cod and the Islands (Falmouth, MA)
Office: Northeast Region
Topic: Telemarketing Fraud, Identity Theft and Other Marketing Scams
Date: May 21, 2001

48. Consumer University (Savannah, GA)
Office: Southeast Region
Topic: Internet Fraud, Telemarketing Fraud, Identity Theft
Date: May 22, 2001

49. Better Business Bureau "Scam Jam II" (Cullman, AL)
Office: Southeast Region
Topic: Identity Theft, Door to Door Sales, Credit Fraud
Date: May 23-24, 2001

50. Elder Fraud Conference (Phoenix, AZ)
Office: Western Region - LA
Topic: Identity Theft, Internet and Telemarketing Fraud
Date: May 23-24, 2001

51. Vermont AG/National White Collar Crime Center (Rutland, VT)
Office: Northeast Region
Topic: Reverse Boilerroom Project
Date: May 24, 2001

52. Abusive Lending Practices Forum with AARP (Schenectady, NY)
Office: Northeast Region
Topic: Abusive Lending Practices
Date: May 31, 2001

53. Consumer University -- Senior Class (Cleveland, OH)
Office: East Central Region
Topic: Identity Theft, Scams, Cons & Fraud, Abusive Lending Practices
Date: June 15 -16, 2001

54. Senior Action Fair - White Memorial Medical Center (Los Angeles)
Office: Western Region - Los Angeles
Topic: Telemarketing Fraud
Date: June 28, 2001

55. Abusive Lending Practices Forum with AARP (Buffalo, NY)
Office: Northeast Region
Topic: Abusive Lending Practices
Date: June 2001

56. The Flim-Flam Show - Phase II (Tyler, TX)
Office: Southwest Region
Topic: Telemarketing Fraud Prevention
Date: Television Rebroadcast June 2001

57. Senior Citizens Awareness Day (SCAD) (Tacoma, WA)
Office: Northwest Region
Topic: Consumer fraud exhibit booth
Date: August 2001

The following additional events have been planned for September and October 2001:

58. Consumer University (Gainesville, GA)
Office: Southeast Region
Topic: Internet Fraud and Telemarketing Fraud
Date: September 28, 2001

59. Georgia Gerontology Society Annual Meeting (Columbus, GA)
Office: Southeast Region
Topic: Internet Fraud, Telemarketing Fraud, Identity Theft
Date: October 1, 2001

In addition, the Regional Offices participate in the following ongoing Working Groups, Task Forces, and Projects:

Midwest Region:	Canadian Cross-Border Strategic Partnership
Northeast Region:	NYCitywide Foreclosure Prevention Task Force
Northwest Region:	Oregon Dept. of Aging Consumer Education Project
	Canadian lottery “reverse mail” project, to educate intended recipients of Canadian lottery mailings seized by US Customs.
Southeast Region:	AARP/Georgia Consumer Fraud Task Force
	Florida Areawide Agency on Aging
Western Region - LA	Telemarketing Victim Call Center – Reverse Boilerroom Project
	Phoenix, Arizona Elder Abuse Task Force
All Regions:	Funeral Rule Enforcement Project

APPENDIX II
COMMISSION TESTIMONY BEFORE CONGRESS
JANUARY 1999-AUGUST 2001

Prepared Statement of the Federal Trade Commission On Financial Privacy Before the Subcommittee on Commercial and Administrative Law of the Committee on the Judiciary, United States House of Representatives (March 5, 1999)

Prepared Statement of the Federal Trade Commission on Agency Lockout on the Off-Label Use of EDTA Chelation Therapy Before the Committee on Government Reform, United States House of Representatives (March 10, 1999)

Prepared Statement of the Federal Trade Commission On the Role of the Commission in Enforcing the Antitrust Laws to Protect Consumers in the Petroleum Industry Before the Subcommittee on Energy and Power of the Committee on Commerce, United States House of Representatives (March 10, 1999)

Prepared Statement of the Federal Trade Commission on Financial Identity Theft Before the Subcommittee on Telecommunications, Trade and Consumer Protection and the Subcommittee on Finance and Hazardous Materials of the Committee on Commerce, United States House of Representatives (April 22, 1999)

Prepared Statement of the Federal Trade Commission on the Positive Comity Process Before the Subcommittee on Antitrust, Business Rights, and Competition of the Committee on the Judiciary, United States Senate (May 4, 1999)

Prepared Statement of the Federal Trade Commission Concerning Deregulation and Competition in the Electric Power Industry Before the Subcommittee on Energy and Power of the Committee on Commerce, United States House of Representatives (May 6, 1999)

Prepared Statement of the Federal Trade Commission Concerning Consumer Protection in a Deregulated Electric Power Market Before the Subcommittee on Energy and Power of the Committee on Commerce, United States House of Representatives (May 26, 1999)

Prepared Statement of the Federal Trade Commission Concerning H.R. 1304 - the Quality Health-Care Coalition Act of 1999 Before the Committee on the Judiciary, United States House of Representatives (June 22, 1999)

Prepared Statement of the Federal Trade Commission Concerning H.R. 1858 - The Consumer and Investor Access to Information Act of 1999 Before the Subcommittee on Telecommunications, Trade and Consumer Protection, Committee on Commerce, United States House of Representatives (July 1, 1999)

Prepared Statement of the Federal Trade Commission Concerning Self-Regulation and Privacy Online Before the Subcommittee on Telecommunications, Trade, and Consumer Protection of the Committee on Commerce, United States House of Representatives (July 13, 1999)

Prepared Statement of the Federal Trade Commission Concerning Financial Privacy, The Fair Credit Reporting Act, and H.R. 10 Before the Subcommittee on Financial Institutions and Consumer Credit of the Committee on Banking and Financial Services, United States House of Representatives (July 21, 1999)

Prepared Statement of the Federal Trade Commission Concerning Self-Regulation and Privacy Online Before the Subcommittee on Communications of the Committee on Commerce, Science, and Transportation, United States Senate (July 27, 1999)

Prepared Statement of the Federal Trade Commission Concerning Deregulation and Competition in the Electric Power Industry Before the Committee on the Judiciary, United States House of Representatives (July 28, 1999)

Prepared Statement of the Federal Trade Commission Concerning Drugstores on the Net: The Benefits and Risks of Online Pharmacies Before the Subcommittee on Oversight and Investigations of the Committee on Commerce, United States House of Representatives (July 30, 1999)

Prepared Statement of The Federal Trade Commission on the Mailing of Deceptive Materials Relating to Games of Chance Before the Subcommittee on the Postal Service of the Committee on Government Reform, United States House of Representatives (August 4, 1999)

Prepared Statement of the Federal Trade Commission on Slotting Allowances and the Antitrust Laws Before the Committee on the Judiciary, United States House of Representatives (October 20, 1999)

Prepared Statement of the Federal Trade Commission on Web Site Cramming Before the Committee on Small Business, United States Senate (October 25, 1999)

Prepared Statement of the Federal Trade Commission on Unsolicited Commercial EMail Before the Subcommittee on Telecommunications, Trade and Consumer Protection of the Committee on Commerce, United States House of Representatives (November 3, 1999)

Prepared Statement of the Federal Trade Commission Concerning Mergers in the Telecommunications Industry Before the Committee on Commerce, Science, and Transportation, United States Senate (November 8, 1999)

Prepared Statement of the Federal Trade Commission On Reauthorization Before the Subcommittee On Consumer Affairs, Foreign Commerce and Tourism of the Committee On Commerce, Science and Transportation, United States Senate (February 9, 2000)

Prepared Statement of the Federal Trade Commission On Identity Theft Before the Subcommittee on Technology, Terrorism and Government Information of the Committee On the Judiciary, United States Senate (March 7, 2000)

Prepared Statement of the Federal Trade Commission Before the Subcommittee on Energy and Power of the Commerce Committee, United States House of Representatives, Concerning Oil Product Price Increases (March 9, 2000)

Prepared Statement of the Federal Trade Commission Before the Subcommittee on Antitrust, Business Rights, and Competition of the Committee on the Judiciary, United States Senate, Concerning Commission Antitrust Enforcement Activities (March 22, 2000)

Prepared Statement of the Federal Trade Commission On Office Supply Fraud Before the Committee on Small Business, United States Senate (March 28, 2000)

Prepared Statement of the Federal Trade Commission Before the Committee On the Judiciary, United States House of Representatives, Concerning Solutions to Competitive Problems in the Oil Industry (March 29, 2000)

Prepared Statement of the Federal Trade Commission Before the Special Committee On Aging, United States Senate, Concerning Commission Law Enforcement Activities Regarding the Funeral Industry (April 11, 2000)

Prepared Statement of the Federal Trade Commission Before the Committee On the Judiciary, United States House of Representatives, Concerning Commission Antitrust Enforcement Activities (April 12, 2000)

Prepared Statement of the Federal Trade Commission Before the Subcommittee On Financial Institutions and Consumer Credit of the Banking and Financial Services Committee, United States House of Representatives (May 4, 2000)

Prepared Statement of the Federal Trade Commission On “Online Privacy: Recent Commission Initiatives,” Before the Subcommittee On Courts and Intellectual Property of the Committee On the Judiciary, United States House of Representatives (May 18, 2000)

Prepared Statement of the Federal Trade Commission Before the Committee On Banking and Financial Services, United States House of Representatives, Concerning Predatory Lending Practices in the Subprime Industry (May 24, 2000)

Prepared Statement of the Federal Trade Commission On “Privacy Online: Fair Information Practices In the Electronic Marketplace,” Before the Committee On Commerce, Science, and Transportation, United States Senate (May 25, 2000)

Prepared Statement of the Federal Trade Commission On “Online Profiling: Benefits and Concerns,” Before the Committee on Commerce, Science, and Transportation, United States Senate (June 13, 2000)

Prepared Statement of the Federal Trade Commission On “Proposed Legislation: The ‘Telemarketing Victims Protection Act’ (HR 3180) and the ‘Know Your Caller Act” (HR 3100), Before the Subcommittee on Telecommunications, Trade and Consumer Protection of the Committee On Commerce, United States House of Representatives (June 13, 2000)

Prepared Statement of the Federal Trade Commission Concerning Midwest Gasoline Prices, Before the Committee on Government Reform, United States House of Representatives (June 28, 2000)

Prepared Statement of the Federal Trade Commission Concerning Midwest Gasoline Prices, Before the Committee on the Judiciary, United States House of Representatives (June 28, 2000)

Prepared Statement of the Federal Trade Commission Concerning Midwest Gasoline Prices, Before the Committee On Commerce, United States House of Representatives (June 28, 2000)

Prepared Statement of the Federal Trade Commission On Living Trust Scams, Before the Special Committee On Aging, United States Senate (July 11, 2000)

Prepared Statement of the Federal Trade Commission On Identity Theft Before the Subcommittee on Technology, Terrorism and Government Information of the Committee on the Judiciary, United States Senate (July 12, 2000)

Prepared Statement of the Federal Trade Commission On "Fraud Against Seniors" Before the Special Committee on Aging, United States Senate (August 10, 2000)

Prepared Statement of the Federal Trade Commission On Identity Theft, Before a Field Hearing of the Subcommittee On Technology, Terrorism and Government Information of the Committee on the Judiciary, United States Senate (August 30, 2000)

Prepared Statement of the Federal Trade Commission On "Marketing Violent Entertainment to Children: A Review of Self-Regulation and Industry Practices in the Motion Picture, Music Recording, and Electronic Game Industries," Before the Committee on Commerce, Science, and Transportation, United States Senate (September 13, 2000)

Prepared Statement of the Federal Trade Commission On Identity Theft, Before the Committee On Banking and Financial Services, United States House of Representatives (September 13, 2000)

Prepared Statement of the Federal Trade Commission On the Issue of the Antitrust Implications of Entertainment Industry Self-Regulation to Curb the Marketing of Violent Products to Children, Before the Committee on the Judiciary, United States Senate (September 20, 2000)

Prepared Statement of the Federal Trade Commission On Credit Scoring Before the Subcommittee On Financial Institutions and Consumer Credit of the Banking and Financial Services Committee, United States House of Representatives (September 21, 2000)

Prepared Statement of the Federal Trade Commission On "Recent Developments In Privacy Protections For Consumers," Before the Subcommittee On Telecommunications, Trade, and Consumer Protection of the Committee On Commerce, United States House of Representatives (October 11, 2000)

Prepared Statement of the Federal Trade Commission On "Internet Fraud," Before the Committee On Finance, United States Senate (April 5, 2001)

Prepared Statement of the Federal Trade Commission On FTC Merger Enforcement in the Gasoline Industry, Before The Subcommittee on Consumer Affairs, Foreign Commerce, and Tourism of the Committee on Commerce, Science, and Transportation, United States Senate (April 25, 2001)

Prepared Statement of the Federal Trade Commission On "Unsolicited Commercial Email," Before the Subcommittee On Communications of the Committee On Commerce, Science and Transportation, United States Senate (April 26, 2001)

Prepared Statement of the Federal Trade Commission On "Internet Fraud," Before the Subcommittee On Commerce, Trade, and Consumer Protection of the Committee On Energy and Commerce, United States House of Representatives (May 23, 2001)

Prepared Statement of the Federal Trade Commission On "Competition In the Pharmaceutical Marketplace: Antitrust Implications of Patent Settlements," Before the Committee On the Judiciary, United States Senate (May 24, 2001)

Prepared Statement of the Federal Trade Commission On "Cross-Border Fraud," Before the Subcommittee On Investigations of the Committee On Governmental Affairs, United States Senate (June 15, 2001)

Prepared Statement of the Federal Trade Commission On The Electronic Signatures In Global and National Commerce Act, Before the Committee On Financial Services, United States House of Representatives (June 28, 2001)

Prepared Statement of the Federal Trade Commission On "The Joint Federal-State Enforcement Model Established By the Telemarketing and Consumer Fraud and Abuse Prevention Act," Before the Subcommittee On Highways and Transit of the Committee On Transportation and Infrastructure, United States House of Representatives (July 12, 2001)

Prepared Statement of the Federal Trade Commission On Rent-To-Own Transactions, Before the Financial Institutions and Consumer Credit Subcommittee of the Financial Services Committee, United States House of Representatives (July 12, 2001)

Prepared Statement of the Federal Trade Commission On "Marketing Violent Entertainment to Children: Self-Regulation and Industry Practices in the Motion Picture, Music Recording, and Electronic Game Industries," Before the Subcommittee on Telecommunications and the Internet of the Committee on Energy and Commerce, United States House of Representatives (July 20, 2001)

APPENDIX III
COMMISSION PUBLIC HEARINGS, WORKSHOPS, AND CONFERENCES
JANUARY 1999-AUGUST 2001
(Organized Chronologically, By the News Releases Announcing Them)

Announcement of June 1999 Public Workshop: United States Perspectives on Consumer Protection in the Global Electronic Marketplace (January 28, 1999)

Announcement of May 1999 Public Workshop: The Interpretation of Rules and Guides for Electronic Media, Procedure for Requesting to Participate, and Request for Submission of Advertisements (March 23, 1999)

Announcement of Public Workshop: Market Power and Consumer Protection Issues Involved with Encouraging Competition in the U.S. Electric Industry (April 15, 1999)

Federal Register Notice Soliciting Public Comment and Announcing Possible July 20, 1999 Workshop Concerning the Children's Online Privacy Protection Rule (April 20, 1999)

Federal Register Notice Announcing Public Workshop on Proposed Regulations Implementing the Children's Online Privacy Protection Act (June 23, 1999)

Announcement of Public Workshop on Online Profiling: The National Telecommunications and Information Administration of the United States Department of Commerce and the Federal Trade Commission have determined to hold a public workshop on "online profiling," the practice of aggregating information about consumers' preferences and interests, gathered primarily by tracking their movements online, and using the resulting consumer profiles to create targeted advertising on Web sites. (September 15, 1999)

Announcement of Joint Public Forum on the Advertising and Marketing of Dial-Around and Other Long-Distance Telecommunications Services (September 23, 1999)

Announcement of Date of Public Workshop Conference Concerning Regulatory Review of the Trade Regulation Rule on Funeral Industry Practices (October 15, 1999)

Alternative Dispute Resolution For Consumer Transactions in the Borderless Online Marketplace: Announcement of Public Workshop and Request for Public Comments from the Federal Trade Commission and the Department of Commerce (February 9, 2000)

Telemarketing Sales Rule: Rule Review, Request for Public Comments, and Announcement of Public Forums (February 23, 2000)

Slotting Allowances and Other Grocery Marketing Practices: When Should They Raise Antitrust Concerns? Announcement of May 31st--June 1st Workshop (March 16, 2000)

Alternative Dispute Resolution for Consumer Transactions in the Borderless Online Marketplace: Notice Announcing Dates and Location of Public Workshop and Extending Deadline for Public Comments (April 6, 2000)

Competition Policy in the World of B2B Electronic Marketplaces: Announcement of Public Workshop on June 29, 2000 (May 4, 2000)

Warranty Protection for High-Tech Products and Services: Announcement of Public Forum and Request for Academic Papers and Public Comment (May 5, 2000)

Announcement of Public Workshop: Competition Policy in the World of B2B Electronic Marketplaces (July 13, 2000)

Warranty Protection for High-Tech Products and Services: Announcement of Dates, Times, and Location of Public Forum (September 29, 2000)

Announcement of Public Workshop: The Mobile Wireless Web, Data Services and Beyond: Emerging Technologies and Consumer Issues (November 14, 2000)

Alternative Dispute Resolution for Consumer Transactions in the Borderless Online Marketplace: Summary of June 6-7, 2000 Public Workshop (November 28, 2000)

Announcement of Public Workshop Concerning the Mobile Wireless Web, Data Services and Beyond: Emerging Technologies and Consumer Issues (December 11, 2000)

Dispute Resolution for Online Business-To-Consumer Contracts and Special Jurisdiction Rules for International Consumer Contracts: Announcement of Public Roundtable (January 19, 2001)

The Information Marketplace: Merging and Exchanging Consumer Data: Announcement of Public Workshop (February 2, 2001)

Federal Trade Commission and Department of Commerce, National Telecommunications and Information Administration: Electronic Signatures In Global And National Commerce Act: Request for Public Comment and Academic Papers and Announcement of Public Workshop (February 7, 2001)

Public Conference: Factors That Affect Prices of Refined Petroleum Products: Notice Announcing Public Conference and Opportunity for Public Comment (July 12, 2001)